

KJ

United States Bankruptcy Court

NORTHERN DISTRICT OF ILLINOIS

219 S. Dearborn Street

Chicago, IL 60604

Kenneth S. Gardner, Bankruptcy Clerk

Date April 14, 2008

Michael Dobbins, Clerk
 United States District Court
 Northern District of Illinois
 219 S Dearborn Street
 Chicago, IL 60604

Case Number

08 cv 46 / 07 A 12

Case Name

Smith vs Sterling - Ahlla

Notice of Appeal Filed

12/17/07

Appellant

Bruce S. Smith

Dear Sir:

Pursuant to **Bankruptcy Rule 8007** transmitted herewith is the Record on Appeal. The Record on Appeal consist of:

☐
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☐
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Transmittal Letter and Civil Cover Sheet
 Designation and Statement of Issues
 Transcript of Proceeding
 In Forma Pauperis

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☐
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☐

Notice of Appeal
 Copy of Documents Designated
 Exhibits
 Expedited Notice of Appeal

Additional Items Included

☐

FILED
APR 14 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

☐

Total Volumes Transmitted

The following items will be transmitted as a supplemental to the Record on Appeal

☒

Brief of Appellee Sandra Sterling-Ahlla with Notice of Filing

Previous D C Judge

gottschall/valdez

Case Number

By Deputy Clerk

[Signature]

RECEIVED
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS PH 10: 26
EASTERN DIVISION
CLERK
U.S. DISTRICT COURT

BRUCE S. SMITH, MD
DEFENDANT-APPELLANT,

NO. 1:08-CV-46

v.

SANDRA STERLING-AHLLA,
PLAINTIFF-APPELLEE

Hon. Harry D. Lienenweber, Presiding

ADVERSARY NO. 07 A 00012

BRUCE S. SMITH, MD
FORMER DEBTOR,

BANKRUPTCY NO. 05 40196

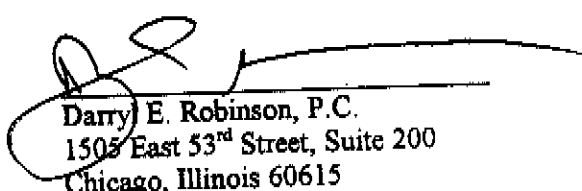
Notice of Filing

To: Steven H. Jesser
790 Frontage Road, Suite 110
Northfield, IL 60093

PLEASE TAKE NOTICE that I have filed this day with the Clerk of the Above Court,
PLAINTIFF-APPELLEE SANDRA STERLING-AHLLA's RESPONSE BRIEF, a copy of
which is attached hereto and herewith served upon you.

DATED at Chicago, Illinois this 10th day of April 2008.

Respectfully Submitted,

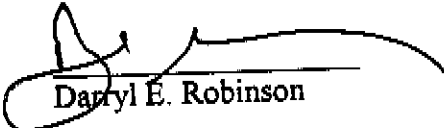

Darryl E. Robinson, P.C.
1505 East 53rd Street, Suite 200
Chicago, Illinois 60615

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
APR 11 2008

KENNETH S. GARDNER, CLERK
PS REP. - AI

CERTIFICATE OF SERVICE

I, Darryl E. Robinson, an attorney, certify that the attached response was delivered to the above named parties on the 10th day of April 2008 by mailing a copy of same in the U.S. Post Box located at 1505 East 53rd Street in Chicago, Illinois to the address above.



Darryl E. Robinson

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE.

BRUCE S. SMITH
DEFENDANT-APPELLANT)

v.

SANDRA STERLING-AHLLA
PLAINTIFF-APPELLEE)

BRUCE SMITH
FORMER DEBTOR)

Court Number 1:08-cv-00046

Honorable Harry D. Lienenweber
Schmetterer

ADVERSARY NO. 07 A 00012

BANKRUPTCY NO. 05 40196

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

APR 11 2008

BRIEF OF APPELLEE SANDRA STERLING-AHLLA KENNETH S. GARDNER, CLERK
PS REP. - AI

Plaintiff, Appellee, Sandra Sterling-Ahlla, by her attorneys, Darryl E. Robinson, PC and John F. Lyke, Jr. and Associates submits her brief to this Court and in support of the Facts and Conclusions of Law entered by the Honorable Jack B. Schmetterer in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, on 12/17/07.

TABLE OF POINTS AND AUTHORITIES

CASES

<u>Grella v. Salem Five Cent Sav. Bank</u> , 42 F.3d 26, 30 (1 st Cir. 1994).....	3
<u>In re O'Shaughnessy</u> , 252 B.R. 722, 738 (N.D. Ill. 2000).....	5
<u>In re Castle</u> , 289 B.R. 282 (E.D. Tenn. 2003).....	5
<u>In re Glenwood Med. Group, Ltd.</u> , 211 B.R. 282, 285 (Bankr. N.D. Ill. 2007).....	5

U.S. DISTRICT COURT
CLERK

APR 10 2008

RECEIVED

<u>In re Longardner and Associates, Inc.</u> , 855 F.2d 455, 465 (7 th Cir. 1988) cert. denied, 489 U.S. 1015, 109 S.Ct. 1130, 103 L.Ed. 2d 191 (1989).....	5
<u>Illinois ex rel. Hartigan v. Peters</u> , 871 F.2d 1336, 1340 (7 th Cir. 1989).....	5
<u>In re S.N.A. Nut Co.</u> , 198 B.R. 541, 543 (Bankr. N.D.Ill. 1996).....	5
<u>In re Walker</u> , 149 B.R. 511, 514 (Bankr. N.D.Ill. 1992).....	5
<u>In re Marino</u> , 195 B.R. 886, 894 (Bankr. N.D.Ill. 1996).....	6
<u>Stathopoulos v. Bostrom</u> (In re <u>Bostrom</u>), 286 B.R. 352 (Bankr. N.D.Ill. 2002).....	7
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STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

Rule 8013. Disposition of Appeal: Weight Accorded Bankruptcy Judge's Findings of Fact:

On appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a Bankruptcy Judge's judgment, order, or decree or remand with instructions for further Proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

STATE OF ISSUES PRESENTED

1. Whether debtor committed fraud in failing to list plaintiff-appellee, among many others, in the schedule of creditors as required by the bankruptcy rules.
2. Whether debtor failed to provide the creditor adequate notice by not listing the plaintiff-appellee in the schedule of creditors and certificate of service.
3. Whether the Bankruptcy committed clear error in its finding of facts and legal conclusions.

APPLICABLE STANDARD OF APPELLATE REVIEW

When a district court reviews a decision of a bankruptcy court, it reviews the factual findings for clear error and its legal consideration de novo. Fed R. Bankr. P. 8013; Grella v. Salem Five Cent Sav. Bank, (1st Cir. 1994)

STATEMENT OF THE CASE

1. . Bruce Smith (Hereinafter the "Defendant") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") on September 26, 2005 under case number 05 b 40196.

2. This adversary proceeding arises out of and relates to the Chapter 7 case of the debtor on the docket of this court.

3. At the time he filed his Bankruptcy Petition, Debtor knew that Ms. Sterling-Ahalla was suing him for an intentional tort in the Circuit Court of Cook County, Illinois in the case Sterling-Ahlla v. Dr. Bruce S. Smith et al., 06 L 7670 Formerly 03 L 15759 ("the Lawsuit").

4. The Debtor actually listed the Lawsuit in his Statement of Financial Affairs but did not list her anywhere else in his Petition. See Exhibit A, Copy of Transcript Pg.9, lines 11-25 and Pg 10, lines 1-22 , Pg. 29, lines 23-25

5. During that period Ms. Sterling-Ahlla's intentional tort claim (See Attached

Complaint-Exhibit B) against Debtor continued.

6. A notice of motion in state court was faxed over to plaintiff-appellee's attorney on December 23, 2005. See Exhibit C

7. At the time Debtor gave plaintiff-appellee notice via fax; however, Attorney Robinson was on vacation for the holidays from December 23, 2005 through January 3, 2006. See Exhibit A, Pg. 17, lines 11-25, Pg. 18, lines 1-14

8. A hearing over the issue was not held until January 7, 2006, two days before the due date to contest dischargeability.

9. In addition, the Debtor represented to Attorney Robinson in court that the Bankruptcy had just been filed.

10. The Lawsuit is still progressing against the Debtor in the Circuit Court of Cook County. No judgment has been entered.

11. USBC ND IL ED No. 05-40196 was dismissed on January 17, 2006.

12. In his findings of facts and conclusions of law, Judge Schmetterer found, inter alia,

A. Debtor made a false oath when he signed the Declaration Concerning Debtor's Schedules. It is no excuse that Debtor signed the declaration on the advice of counsel with belief that his attorney had included such information, or that he did not know the difference between schedule F and the Statement of Financial Affairs.

B. Moreover, the Judge held that the Debtor had a financial motive for attempting to conceal his bankruptcy petition from plaintiffs because his insurance carrier would not cover any judgment against him as a result of his employer failure to purchase a "tail rider."

ARGUMENT

The Creditor did not received timely and adequate notice under Federal Rule of Bankruptcy Procedure 4007(c)

The fact that the Debtor knowingly failed to list Ms. Sterling-Ahllal as a creditor and further deliberately failed to tell her or her attorney that he had filed for Bankruptcy is itself a basis to allow Ms. Sterling-Ahlla to file for up to one year from the Discharge a complaint seeking to declare the debt non-dischargeable or to seek to revoke the discharge. E.g., In re O'Shaughnessy, 252 B.R. 722, 738 (N.D. Ill. 2000); 11 U.S.C. 727; In re Castle, 289 B.R. 282 (E.D. Tenn. 2003).

The purpose of requiring a debtor to list creditors with their proper mailing addresses is to afford those creditors basic due process notice. In re Glenwood Med. Group, Ltd., 211 B.R. 282, 285 (Bankr. N.D.Ill. 1997). Thus, if a creditor is not given reasonable notice of the bankruptcy case and the relevant bar dates, its claim cannot be constitutionally discharged. See In re Longardner and Assocs., Inc., 855 F.2d 455, 465 (7th Cir. 1988), cert. denied, 489 U.S. 1015, 109 S.Ct. 1130, 103 L.Ed.2d 191 (1989). The Court must look at the totality of the circumstances in determining whether notice was reasonable. Illinois ex rel. Hartigan v. Peters, 871 F.2d 1336, 1340 (7th Cir. 1989). What constitutes reasonable notice, however, varies according to the knowledge of the parties. See In re S.N.A. Nut Co., 198 B.R. 541, 543 (Bankr. N.D.Ill.1996). One circumstance to consider in evaluating the sufficiency of notice is whether alleged inadequacies in the notice prejudiced the creditor. In re Walker, 149 B.R. 511, 514 (Bankr. N.D.Ill.1992) Another circumstance to consider is whether notice was given to the creditor in time for it to take meaningful action in response to the impending deprivation of its rights. Id

Actual notice of the bankruptcy proceeding may, in certain cases, constitute reasonable notice for purposes of due process. However, such notice satisfies the Bankruptcy Code and due process requirements only if the creditor receives notice adequate enough to afford it an opportunity to file a complaint or seek to extend the time to file a complaint for dischargeability..." In re Marino, 195 B.R. 886, 894 (Bankr. N.D.Ill.1996) (citing Walker, 149 B.R. at 514). In the Walker case, the creditor first learned of the debtor's bankruptcy case from a non-lawyer third party, only twenty days before the deadline for filing 11 U.S.C. Section 523 dischargeability actions. Because the only information known to the creditor was that some form of bankruptcy had been filed; the information was acquired through a conversation between two non-lawyers; and the party conveying the information was not a representative of the debtor, the court held that the requisite notice under the Bankruptcy Code and the Fifth Amendment had not been provided. Walker, 149 B.R. at 516-17. The Court stated that after the conversation between the parties, the creditor was left with a mere twenty days to find out that some special action in the bankruptcy court would be required, to contact and possibly hire a lawyer, investigate the creditor's rights in the debtor's bankruptcy, and finally file an Adversary Complaint or motion to extend time prior to bar date. Id at 515

In the case at hand, the only information known to creditor on January 7, 2006 at a hearing in state court was that some form of bankruptcy had been filed. "Consequently, the creditor was left with a mere two days to find out that some special action in the bankruptcy court would be required, investigate the creditor's rights in the debtor's bankruptcy, and finally file an Adversary Complaint or motion to extend time prior to bar date." As in the Walker case, the creditor found out about the Debtor's bankruptcy from a third party in a pending state court action against the debtor. However, unlike in Walker, the creditor only had two days to

investigate and file the appropriate responses prior to the bar date (January 9)." The debtor believes that two days was adequate notice to take such action. If twenty days is not adequate notice, then this Court must surely find that two days is not adequate. This Court must look at the totality of the circumstances to determine whether notice was reasonable. In this case, the Debtor had many opportunities to notify all of the parties listed in the statement of financial affairs because his Bankruptcy was filed on September 26, 2005. Although, he failed to schedule creditor, among others, he still had every opportunity to notify all interested parties. Instead, he waits until two days before the bar date for contesting discharge to file a motion to stay the state case although his bankruptcy was scheduled for discharged on January 17, 2006. This Court must inquire as to: 1. What motive did the debtor have when he filed his motion to stay the state case? 2. What was the debtor's intent for attempting to stay the state case for only ten days? 3. Why was a motion to stay the state case not filed soon after the bankruptcy filing on September 26, 2005? In looking at the totality of the circumstances, it is obvious that the debtor's intent was to deny reasonable and timely notice to all parties who were not properly scheduled.

WHEREFORE, Sandra Sterling-Ahlla requests that the Court enter an order affirming the Bankruptcy Court.

The Debtor was fraudulent in not scheduling all of the creditors who had pending lawsuits against him

The purpose of Section 727(a) (4) is to enforce the debtor's duty of disclosure and to ensure that the debtor provide reliable information to those who have an interest in the administration of the estate. Stathopoulos v. Bostrom (In re Bostrom), 286 B.R. 352 (Bankr. N.D.Ill. 2002) For purposes of Section 727(a)(4), a debtor's petition and schedules, statement of financial affairs, statements made at a Section 341 creditor's meeting, and testimony at a Rule

2004 examination all constitute statements that are made under oath. Id at 359-60. Filing false schedules with material omissions or representations with an intent to mislead creditors as to debtor's financial condition constitutes a false oath under Section 727(a) (4). Id at 360. Section 727(d) (1) provides that a court shall revoke a discharge granted under subsection (a) of this section if such discharge was obtained through fraud. In re Lowell & Kay Shelton, 58 BR. 748. The burden is on the debtor to complete their schedules accurately. In re Fadem, 96 F.3d 792,795 (5th Cir. 1996) The burden is on the debtor...to demonstrate absence of fraud or intentional design. Id at 796 (quoting Rion v. Springer (In re Springer), 127 B.R. 702, 708 (Bankr. M.D.Fla. 1991))

In the case a hand, the creditor's complaint alleges that the debtor committed fraud when he did not schedule the creditor, among others, thereby denying the creditor a reasonable and adequate opportunity to file all appropriate responses contesting dischargeability. Therefore, creditor has sufficiently alleged a cause of action.

WHEREFORE, Sandra Sterling-Ahlla requests that the Court enter an order affirming the Bankruptcy Court.

CONCLUSIONS

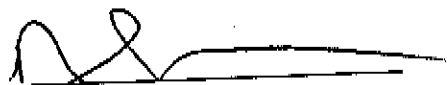
Based on the evidence presented, the Bankruptcy Court was well within its right to find that the Debtor made a false oath when he signed the Declaration Concerning Debtor's Schedules and that the Debtor had a financial motive for attempting to conceal his bankruptcy petition from plaintiffs because his insurance carrier would not cover any judgment against him as a result of his employer failure to purchase a "tail rider." The Court did not commit a clear error in coming to this decision because the facts presented support this conclusion. Therefore, this Court must affirmed the Bankruptcy Court.

WHEREFORE, Sandra Sterling-Ahlla requests that the Court enter an order affirming the Bankruptcy.

Respectfully Submitted,

Sandra Sterling-Ahlla

By


/s/ Darryl Robinson

Darryl Robinson
1505 East 53rd Street, Suite 200
Chicago, Illinois 60615
(773) 955-0400
Atty No. 6239030

A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

BRUCE S. SMITH,

Debtor.

No. 05 B 40196

TRINA TIDWELL,

Plaintiff,

No. 07 A 00011

vs.

BRUCE S. SMITH,

Defendant.

SANDRA STERLING-AHLLA,

Plaintiff,

No. 07 A 00012

vs.

BRUCE S. SMITH,

Defendant.

Chicago, Illinois
September 17, 2007
1:30 p.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

MR. DARRYL ROBINSON
on behalf of Trina Tidwell and Sandra
Sterling-Ahalla;

MR. STEVEN H. JESSER
on behalf of Bruce S. Smith.

I N D E X

<u>WITNESS:</u>	<u>DX</u>	<u>CX</u>	<u>REDX</u>	<u>RECX</u>
CHYKOLA JONES	15			
NATHANIEL SINN	25	36	39	
BRUCE SMITH	41	64	65	

1 THE CLERK: Smith, 05 40196, with related
2 adversaries, Tidwell versus Smith, 07 A 11,
3 Sterling-Ahlla versus Smith, 07 A 12.

4 MR. ROBINSON: Good afternoon, Your
5 Honor. Darryl Robinson for Trina Tidwell and Sandra
6 Ahalla-Sterling.

7 THE COURT: Good afternoon, folks. I
8 read your opening statements contained within your
9 proposed findings of fact and conclusions of law. I
10 assume you plan to offer the evidence that you
11 mention in there. Does the plaintiff want to take
12 five minutes to add to that?

13 MR. ROBINSON: Yes, Judge.

14 THE COURT: Go ahead.

15 MR. ROBINSON: Yes, Judge. On
16 December -- approximately on December 18th, 2003,
17 Judge, Trina Tidwell and Sandra Sterling-Ahalla
18 filed --

19 THE COURT: Use the microphone. Speak a
20 little --

21 MR. ROBINSON: Trina Tidwell and Sandra
22 Ahalla-Sterling filed a complaint in the Circuit
23 Court of Cook County, Judge, against Bruce Smith on
24 two counts. One was sexual assault, and two was
25 respondent superior against Kennedy Medical Center.

1 THE COURT: Is this Sandra Sterling here?

2 MR. ROBINSON: No, they're not, Judge.

3 THE COURT: No. Is Trina Tidwell here?

4 MR. ROBINSON: No, they're not, Judge.

5 THE COURT: Okay. Go ahead.

6 MR. ROBINSON: Okay. And --

7 THE COURT: Is this your first witness?

8 MR. ROBINSON: My first witness, yes.

9 THE COURT: Go ahead.

10 MR. ROBINSON: Against Bruce Smith,

11 Judge. The case proceeded in state court. Sometime
12 around September of 2005, Bruce Smith filed a
13 Chapter 7 bankruptcy petition in U.S. Bankruptcy
14 Court in the Northern District of Illinois, and in
15 such petition he failed to list both Trina Tidwell
16 and Sandra Sterling-Ahalla as creditors under the
17 schedule of creditors. That petition has been
18 stipulated to, Judge, and should be the list of
19 creditors as outlined by the yellow tabs outlining
20 where the list of creditors is.

21 As a result of failing to list Trina
22 Tidwell and Sandra Ahalla-Sterling as creditors,
23 they did not receive notice of the bankruptcy, did
24 not receive notice of the meeting of creditors as
25 far as being able to file their objections.

1 On December the 23rd, 2005, a notice
2 of a motion to transfer the state case from
3 bankruptcy -- from state court to bankruptcy was
4 filed over to the Law Offices of Darryl Robinson and
5 John F. Lyke.

6 THE COURT: You say the plaintiffs'
7 lawyer got notice of that?

8 MR. ROBINSON: Yes.

9 THE COURT: On what date?

10 MR. ROBINSON: It was on December the
11 23rd, 2005, Judge, one of the documents that was
12 stipulated to.

13 THE COURT: Go ahead.

14 That was about 16 days before the
15 deadline.

16 MR. ROBINSON: Yes, Judge. Let me
17 finish. That was the notice that was faxed over to
18 the office. The testimony will show that, in fact,
19 the attorney on the particular case was on vacation
20 until after January the 1st. So although the
21 office --

22 THE COURT: So when did the attorney come
23 back?

24 MR. ROBINSON: The attorney came back on
25 January the 3rd when he obtained knowledge of the

1 bankruptcy. So notice --

2 THE COURT: That was six days before the
3 deadline.

4 MR. ROBINSON: Yes, it is, Judge.

5 THE COURT: Yes.

6 MR. ROBINSON: Six days before the
7 deadline. The hearing was heard on January the 7th.

8 THE COURT: What hearing?

9 MR. ROBINSON: The hearing on
10 transferring the case from state court to bankruptcy
11 court.

12 THE COURT: And what happened at that?

13 MR. ROBINSON: The judge agreed,
14 obviously, to transfer the case based upon the
15 pending bankruptcy, although the discharge date,
16 obviously, Judge, was --

17 THE COURT: When was there a discharge
18 entered in that bankruptcy?

19 MR. ROBINSON: The discharge would have
20 been entered on January the 17th, Judge.

21 THE COURT: So the attorney received
22 notice two weeks before the discharge entered.

23 MR. ROBINSON: Yes, but had knowledge six
24 days before, six days.

25 THE COURT: You said he received the

1 notice January 3rd.

2 MR. ROBINSON: Yes.

3 THE COURT: Discharge entered
4 January 17th.

5 MR. ROBINSON: Oh, the 17th.

6 THE COURT: Deadline for filing something
7 past January 9th.

8 MR. ROBINSON: Yes.

9 THE COURT: Do I have those dates right?

10 MR. ROBINSON: Yes, Judge, you have those
11 dates right.

12 THE COURT: Go ahead.

13 MR. ROBINSON: Yes, Judge. And based on
14 this information and factors that we've set out,
15 we've made a -- filed an adversary complaint, both
16 Trina Tidwell and Sandra Sterling-Ahalla, based
17 upon, one, failure to receive proper notice. In
18 this case we believe notice is actual knowledge, as
19 written out in our findings and conclusions of law.
20 And also based on fraud.

21 As this court laid out in the
22 beginning of this adversarial proceeding, it assumes
23 that an attorney knows what he is doing when he --

24 THE COURT: The court laid out?

25 MR. ROBINSON: Yes.

1 THE COURT: Did I enter an opinion in
2 this case or no?

3 MR. ROBINSON: Not a written opinion,
4 Judge. It was a verbal opinion.

5 THE COURT: Go ahead.

6 MR. ROBINSON: So that an attorney knows
7 what he is doing when he is actually doing it,
8 Judge, those -- Trina Tidwell and Sandra
9 Sterling-Ahalla, along with about four or five other
10 pending creditors and lawsuits against Bruce Smith
11 at that time, were left off the schedule and put in
12 the statement of financial affairs.

13 THE COURT: Did the same attorney
14 represent Sandra Sterling-Ahalla as well as Trina
15 Tidwell?

16 MR. ROBINSON: Yes, Judge.

17 THE COURT: Okay.

18 MR. ROBINSON: And based on that, we had
19 a second account of fraud. That's all we wanted to
20 add, Judge.

21 THE COURT: Thank you.

22 Counsel, do you want to take five
23 minutes to add something to your proposed findings?

24 MR. JESSER: Yes, Judge. Thank you.
25 Steven H. Jesser, J-e-s-s-e-r, for Dr. Bruce S.

1 Smith. Mr. Robinson is indeed the attorney who has
2 been representing the plaintiffs throughout this
3 process. If it weren't --

4 THE COURT: Both in state court and here
5 you mean?

6 MR. JESSER: Yes.

7 THE COURT: In state court and here,
8 right?

9 MR. JESSER: Yes.

10 THE COURT: Okay.

11 MR. JESSER: Your Honor has entered no
12 written or oral opinions in the past other than the
13 orders of the court. If it were not a fiction, I
14 might be inclined to move for judgment on the basis
15 of the opening statement. But there will be
16 absolutely no testimony or evidence from either side
17 this afternoon in the nature of fraudulent conduct
18 by Dr. Smith or his attorney who prepared the
19 bankruptcy petition, who is on his way over here to
20 testify this afternoon that Dr. Smith or his
21 attorney intended to omit these two lawsuits which
22 were scheduled, but admittedly not in the preferred
23 position, not in the proper place in the bankruptcy
24 petition. I'm not going to stand before Your Honor
25 and claim that the lawsuits, which were very well

1 described, were in the right place. They were in
2 the statement of financial affairs.

3 THE COURT: Sir, the problem comes
4 because if they're in the statement of financial
5 affairs, that is not the way that they get on the
6 distribution list for notice of the bankruptcy,
7 which gets sent out only to people who are scheduled
8 as creditors.

9 MR. JESSER: And --

10 THE COURT: Do you concede that they were
11 creditors, that these two plaintiffs are creditors?

12 MR. JESSER: Yes, Your Honor, because two
13 of the exhibits which -- if I'm speaking too loud
14 tell me. Two of the exhibits that we submitted to
15 Your Honor pursuant to the pre-trial order were a
16 prior bankruptcy filing from a year before, the year
17 2004, where indeed there can be no argument about
18 Dr. Smith listing --

19 THE COURT: What's the explanation why it
20 wasn't listed on the particular case that's in --
21 that's involved here, that is the second bankruptcy
22 filing?

23 MR. JESSER: As you'll hear in a few
24 minutes from Mr. Sinn, who may be waiting outside to
25 testify, when it comes time for our case in chief,

1 he was a very young attorney, first year of
2 practice, in somewhat of a mill; there was an
3 impending statutory change-over date; his office was
4 extremely busy; he was handling 15 bankruptcies a
5 day. I'm not excusing all of that, Judge. It's
6 just background for the fact that he made a mistake.
7 His people --

8 THE COURT: Sir --

9 MR. JESSER: -- his staff --

10 THE COURT: -- I'd like to ask you this
11 question: Do you concede that an electronic
12 signature of your client's signature was put on the
13 bankruptcy filing?

14 MR. JESSER: We concede, yes. And we
15 concede --

16 THE COURT: Because all signatures are
17 electronic. Do you concede that his electronic
18 signature went on the bankruptcy filing?

19 MR. JESSER: Yes. And more, Judge,
20 Dr. Smith is an obstetrician and gynecologist
21 professional. We don't back away from the fact that
22 the 2005 voluntary petition is what it is. It's
23 Dr. Smith's petition. He takes --

24 THE COURT: And since -- do you take the
25 view that his electronic signature was affixed

1 without him reading it, reading the petition --

2 MR. JESSER: No.

3 THE COURT: -- he swore to or --

4 MR. JESSER: No.

5 THE COURT: -- not?

6 MR. JESSER: No, I didn't say that,
7 Judge, as you'll hear in a few minutes.

8 THE COURT: Do you concede he read it
9 before his electronic signature was affixed?

10 MR. JESSER: What I'd like to concede,
11 Your Honor, is that he sat with his attorney,
12 Mr. Sinn. Mr. Sinn went through it with him. And
13 not being a legal professional, but a medical
14 professional, he indeed signed the petition based on
15 advice of counsel. The counsel is going to come
16 into court in a few minutes and admit to you --

17 THE COURT: I think he's here.

18 MR. JESSER: Okay. Very well. Mr. Sinn
19 is here. That in retrospect, the lawsuits which
20 Mr. Robinson has prosecuted in state court were not
21 in the preferred place in the petition.

22 What's more, I may have no questions
23 of this very nice lady who works for Mr. Robinson
24 because what he has said in his survey of the
25 evidence is that on December 23 my office received a

1 fax from Johnson & Bell, which has been representing
2 Dr. Smith in state court, to come to court in early
3 January about a motion to mothball the case on the
4 bankruptcy section of Judge Maddocks. It doesn't
5 matter that Mr. Robinson was away on vacation. It
6 doesn't matter that when I'm out of town I'm
7 checking e-mails and voice mails 12 times a day.
8 His office received notice that there was an
9 '05 bankruptcy action pending on December 23, '05,
10 which is more than three weeks before Your Honor
11 discharged this case on January 16. Again, and I'm
12 bucking up on my five minutes. There's no fraud
13 here, Judge, which is the gist of the action.

14 THE COURT: Thank you.

15 All right. Case for the plaintiff.

16 MR. ROBINSON: Yes, Judge.

17 THE COURT: On Friday we went over the
18 stipulation which, unhappily, was filed in the
19 district court instead of the bankruptcy court. But
20 the record is very clear that Plaintiffs' Exhibits
21 1, 2, 3, and 4 are stipulated to.

22 MR. ROBINSON: Yes, they are, Judge.

23 THE COURT: And, therefore, they are
24 admitted into evidence. And you may proceed with
25 your witness.

1 MR. ROBINSON: Yes, Judge. Before I
2 proceed with my witness, Judge, we filed an
3 adversary complaint on two counts. On the count of
4 fraud, we want to stand on the bankruptcy petition
5 alone. We believe that the standard is
6 preponderance of evidence, so --

7 THE COURT: Use that microphone and speak
8 into it --

9 MR. ROBINSON: I'm sorry, Judge.

10 THE COURT: -- so I can hear you.

11 MR. ROBINSON: On the count of fraud, we
12 want to stand on the bankruptcy petition alone. We
13 believe that the standard is a preponderance of
14 evidence. And Bruce Smith's failure to list Trina
15 Tidwell and Sterling-Ahalla as creditors we believe
16 is fraud per se, and that the burden of proof moves
17 to the defendant to prove that it was not fraud. My
18 witness is only going to testify to the issue of
19 notice, Judge. There's two counts.

20 THE COURT: Do you have case law
21 authority for what you just said?

22 MR. ROBINSON: Yes, Judge. It's a part
23 of my findings of fact and conclusions.

24 THE COURT: Okay.

25 MR. ROBINSON: Thank you, Judge.

1 THE COURT: One of those citations in
2 there?

3 MR. ROBINSON: Yes, Judge.

4 THE COURT: Okay. Thank you. Do you
5 want to put on your witness?

6 MR. ROBINSON: Yes, I'd like to call my
7 first witness.

8 THE COURT: Over there, ma'am, please.

9 (Witness sworn.)

10 THE CLERK: Please state your name for
11 the record.

12 THE WITNESS: Chykola Jones.

13 THE CLERK: You may be seated.

14 THE COURT: Spell your last name, please.

15 THE WITNESS: J-o-n-e-s.

16 THE COURT: J-o what?

17 THE WITNESS: n-e-s.

18 THE COURT: And your first name?

19 THE WITNESS: Chykola, C-h-y-k-o-l-a.

20 THE COURT: Proceed, counsel.

21 CHYKOLA JONES, WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. ROBINSON:

24 Q Ms. Jones, what is your current
25 occupation?

1 A I'm an office clerk.

2 Q And where is your place of employment at?

3 A 1505 East 53rd Street.

4 THE COURT: What office? Whose office is
5 that?

6 THE WITNESS: It's a law office, Attorney
7 Darryl Robinson and Attorney John F. Lyke.

8 BY MR. ROBINSON:

9 Q Are there any other attorneys working in
10 that office?

11 A Yes, there are.

12 Q And what are their names?

13 A Roger Best. We also have Attorney Randy
14 Peterson who is out on leave.

15 Q Approximately how long have you been
16 working at that location, Ms. Jones?

17 A Approximately three years.

18 Q What are some of your primary
19 responsibilities?

20 A I answer phones, I take messages, I file,
21 I collect faxes, I sort mail.

22 Q You said that you collect faxes. How
23 often would you receive faxes over at that office?

24 A I would say daily.

25 Q And what would you do with those faxes

1 after you received them?

2 A I would see who it's to the attention of,
3 and I would put it on the respective person's desk.

4 Q Now, after you place that fax on the
5 respective person's desk, would you call that
6 respective person?

7 A No, I wouldn't.

8 Q Do you recall receiving --

9 MR. ROBINSON: Strike that, Judge.

10 BY MR. ROBINSON:

11 Q Are you familiar with the case of Trina
12 Tidwell versus Bruce Smith and Sandra
13 Ahalla-Sterling versus Bruce Smith?

14 A Yes. I know the names from the office.

15 Q Yes. Do you recall receiving a fax
16 concerning that case on December 23rd, 2005?

17 A I can't say that I recall December of
18 2005.

19 Q If you had received a fax on that day,
20 what would you have done with it?

21 A I would have placed it on the respective
22 person's desk.

23 Q And who was the lead attorney in the
24 Trina Tidwell and Sandra Ahalla-Sterling case?

25 A Attorney Darryl Robinson.

1 Q And would you have placed that fax on
2 Attorney Darryl Robinson's desk?

3 A Yes, I would have, sir.

4 Q Was Darryl Robinson in the office on
5 December 23rd?

6 A I can't say that he was.

7 Q Do you know where he would have been on
8 December 23rd?

9 A Attorney Robinson always takes vacation
10 around that time.

11 Q Do you know when he would have returned
12 from vacation?

13 A It would have been after the 1st of the
14 year.

15 Q Mrs. Jones, are you an attorney?

16 A No, I'm not, sir.

17 Q Have you ever worked in a bankruptcy law
18 firm?

19 A Not at all, sir.

20 Q If you had received that motion to
21 transfer to bankruptcy, would you have known what it
22 is?

23 A No, I would not have.

24 MR. ROBINSON: No further questions,
25 Judge.

1 THE COURT: Any cross?

2 MR. JESSER: No, Your Honor.

3 THE COURT: Do you have any more
4 questions of the witness?

5 MR. ROBINSON: No more questions, Judge.

6 THE COURT: You may step down. Thank you
7 for your help.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: At this point I note from the
11 pre-trial order that all well-pleaded facts admitted
12 in the pleadings are admitted into evidence unless
13 objections were filed before trial, and no such
14 objections have been noted by us. So all of the --
15 I will now admit into evidence all admissions in the
16 answers to the complaint to well-pleaded facts.

17 Now, do you rest?

18 MR. ROBINSON: Yes, Judge, we rest.

19 MR. JESSER: Judge, I'd like to move for
20 a directed finding at this time, if that's allowed
21 in this type of proceeding, in that the evidence is
22 that Mr. Robinson's office received not as directly
23 as it could have been in retrospect, but notice of
24 doctor's pending bankruptcy before Your Honor, as
25 early as December 23, 2005, some three weeks before

1 Your Honor discharged the petition on January 17,
2 2005. There's no even conceding arguendo
3 Mr. Robinson cited standard of preponderance of the
4 evidence, there's no evidence whatsoever in the
5 plaintiffs' case in chief of any fraudulent conduct
6 on the part of Dr. Smith or any of his attorneys,
7 any intentional conduct to mislead Ms. Tidwell or
8 Ms. Sterling-Ahalla or to otherwise conceal the
9 existence of the 2005 petition for bankruptcy relief
10 before Your Honor.

11 THE COURT: Was the signature of your
12 client, even though it was electronic, but you
13 conceded it was his signature even though
14 electronic, was the -- was it -- was his schedule
15 truthful and complete since these two cases were not
16 placed in the schedules, they were only placed in
17 the statement of affairs?

18 MR. JESSER: With respect to the first
19 part of the court's inquiry, I might -- since we
20 both admitted to you we're not bankruptcy
21 specialists, I might like to defer that part to my
22 examination of Mr. Sinn concerning electronic
23 signatures, et cetera, since Mr. Robinson as late as
24 last week was running into problems with electronic
25 filing.

1 THE COURT: Now, wait a second. Did you
2 just back away from your concession that we should
3 treat the electronic signature of your client as a
4 signature by your client?

5 MR. JESSER: No, I'm not. This is
6 doctor's petition. I'm not acting off of --

7 THE COURT: Well, then assuming it's the
8 same as if he signed it with a pen on a piece of
9 paper, that's what electronic signature does, wasn't
10 part of that schedule he filed under oath erroneous?

11 MR. JESSER: No. Your Honor --

12 THE COURT: There's a certificate --
13 there's a -- he scheduled -- he filed a schedule --
14 pardon me, an affidavit saying that everything on
15 the schedules were true and complete, but the
16 schedule of his creditors was not complete, right?

17 MR. JESSER: I think there's an
18 explanation, Judge, as --

19 THE COURT: There may be an explanation.
20 But, I mean, isn't that the state of things at the
21 moment --

22 MR. JESSER: No.

23 THE COURT: -- that he did not file a
24 complete schedule?

25 MR. JESSER: Doctor's intention in

1 signing the petition was to certify that his
2 petition was true and complete. As it turns out,
3 and sometimes this even befuddles attorneys such as
4 me, the precise information that should have been on
5 the schedule was somewhere off in another part of
6 the petition.

7 THE COURT: I understand. Thank you. I
8 will reserve ruling on your motion until the end of
9 the case --

10 MR. JESSER: Thank you.

11 THE COURT: -- until all of the evidence
12 is in. Present your evidence.

13 MR. JESSER: All right. Initially before
14 I call Mr. Sinn, will the court receive Defendant's
15 Exhibits 1 and 2?

16 THE COURT: Well, let's deal with that.
17 I've got those in front of me.

18 I do believe that the defense has
19 not objected to 3 and 4; am I right, folks?

20 MR. ROBINSON: Yes, Judge.

21 THE COURT: So 3 and 4 are admitted.

22 And you've only objected to 1 and 2,
23 right, sir?

24 MR. ROBINSON: Yes, Judge.

25 THE COURT: Is there anything you want to

1 add to your objection?

2 MR. ROBINSON: Judge, I'm objecting to 1
3 and 2 on the basis of, obviously, relevance and
4 prejudice.

5 THE COURT: What do you mean prejudice?

6 MR. ROBINSON: Well, their allegation,
7 Judge, is that, in fact, we received notice of a
8 bankruptcy in 2004. So therefore that notice
9 transfer of the 2005 bankruptcy, that's an issue of
10 relevance. One bankruptcy has nothing to do with
11 the other in terms of that. And so we believe that
12 if the judge was to look at that notice as
13 transferred, then that would be prejudice to my
14 client. That's all, Judge.

15 MR. JESSER: Judge, if I've heard it
16 once, I've heard it 50 times, "counsel, it goes to
17 the weight. I'll allow the exhibit but then
18 decide --"

19 THE COURT: The two exhibits are
20 admissible. I think they're relevant.

21 MR. JESSER: Very well. Thank you.

22 THE COURT: And they are admitted.

23 Proceed with your evidence.

24 MR. JESSER: I'm going to call --

25 THE COURT: That's Exhibit -- so your

1 exhibit -- Defense Exhibit 1, 2, 3, and 4 have now
2 been admitted.

3 MR. JESSER: All right. I'd like to call
4 Mr. Nathaniel Sinn, S-i-n-n.

5 THE COURT: Would you go over there, sir,
6 please.

7 (Witness sworn.)

8 THE CLERK: Please state your name for
9 the record, please.

10 THE WITNESS: Nathaniel Sinn. Last name
11 is spelled S-i-n-n, first name is N-a-t-h-a-n-i-e-l.

12 THE COURT: Spell that last name again,
13 please.

14 THE WITNESS: S-i-n-n. Two Ns like
15 Nancy.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you.

18 MR. JESSER: May I examine him from here,
19 Judge?

20 THE COURT: Yes, indeed.

21 MR. JESSER: Good afternoon, Mr. Sinn.

22 THE WITNESS: Good afternoon.
23
24
25

NATHANIEL SINN, WITNESS, SWORN

DIRECT EXAMINATION

BY MR. JESSER:

Q You have previously represented
Dr. Smith?

A I did.

Q All right. I'd like to just ask you a
little background about your career, might try to
take the liberty of leading you just a little.
First, where did you attend college?

A University of Notre Dame.

Q And you graduated there in?

A 2001.

Q From there you proceeded to law school?

A I did. I went to Indiana University,
Bloomington, and graduated in 2004. I went straight
through.

Q All right. Decided to come to the big
city?

A I did. I was tired of the small town. I
grew up in a small town in Indiana, so...

Q All right. And your first position here
in Chicago was?

A My first job was with Macey & Aleman,
also known as Legal Helpers. They do a lot of

1 bankruptcy work.

2 Q All right. And I think His Honor
3 indicated he was well familiar with Legal Helpers.
4 But what is Legal Helpers? It is a bunch of firms?

5 THE COURT: Oh, I don't know that I'm
6 well familiar with them.

7 MR. JESSER: All right.

8 THE COURT: It's just one of the many
9 firms that practices here.

10 BY MR. JESSER:

11 Q Is it a number of firms or...

12 A It's one firm. They have offices in a
13 bunch of different states. It's very similar to a
14 couple firms here in the city. It's based on volume
15 business. Get as many people as you can, file
16 petitions as quickly as possible, basically.

17 Q How long did you spend at that firm?

18 A A little over a year. I believe December
19 of '04 to January of '06.

20 Q Did you do mostly or exclusively
21 bankruptcy work there?

22 A I did all of the bankruptcies, mostly
23 Chapter 7s.

24 Q How many other attorneys were working
25 with you there?

1 A In our office, in the Chicago office,
2 there was probably 25 other attorneys.

3 Q All right. And just for clarity, you did
4 not represent Dr. Smith in his first bankruptcy
5 petition filed in 2004?

6 A No, I did not.

7 Q All right.

8 A I wasn't even licensed, I don't think, if
9 I recall.

10 THE COURT: So you were at Legal Helpers
11 when he filed his second petition?

12 THE WITNESS: That's correct.

13 THE COURT: And you helped him prepare
14 it?

15 THE WITNESS: I did. I met with him,
16 went over the petition when he signed it. It was
17 a -- and then I did the filing.

18 THE COURT: Go ahead.

19 BY MR. JESSER:

20 Q And you somehow do remember Dr. Smith of
21 all of the many clients you had?

22 A I do. I only remember a couple of cases.
23 I remember his just because of the nature of the
24 cases that are at issue. My father is a doctor, and
25 so medical malpractice kind of just stuck out in my

1 mind. It kind of hit home, if you will, so...

2 Q How many times do you recall having
3 conferred with Dr. Smith?

4 A Just once.

5 Q All right. And at that point in time,
6 was anything unusual occurring in your office?

7 A The bankruptcy reform law was going into
8 effect. It was probably -- I remember meeting with
9 him right before that. I don't remember the exact
10 date. Probably September of 2005. So my job at
11 that time was I met with all of our clients to file
12 their petitions before the law changed, and so I met
13 with anywhere from 10 to 20 people a day. And it
14 was my job to go through the petition with them and
15 make sure everything was accurate before we filed.

16 Q Am I correct you met him on a Saturday,
17 or you don't recall?

18 A I don't recall what day it was.

19 Q Okay. Can you explain to His Honor how
20 the petitions were prepared within this firm before
21 they reached you.

22 A The petitions were usually prepared by
23 either a legal assistant or a law clerk or a
24 paralegal-type employee. They were then mailed out
25 to the clients to make corrections, come back to us,

1 and then we would meet with them to go over and
2 ensure that everything was correct, and then we
3 would file the case for them or file the petition.

4 Q On the day on which you met with
5 Dr. Smith, do you have an independent recollection
6 that you met with other clients as well?

7 A Yeah, I did. I met with quite a few, I'm
8 sure. But I don't know the exact number.

9 Q Do you recall how long approximately you
10 spent with Dr. Smith?

11 A Probably -- I believe I spent probably
12 half an hour or so with him, probably a little bit
13 longer just because I was asking about the cases
14 that were on the statement of financial affairs and
15 the cases at issue, basically.

16 Q Now, these two lawsuits, I'm not sure
17 when you walked in, but we have conferred in the
18 past that Mr. Robinson was prosecuting in state
19 court, although they're on the bankruptcy calendar
20 right now, they are within the four corners of the
21 2005 voluntary petition that your firm filed on
22 behalf of Dr. Smith?

23 A Yeah. I mean, if you're asking that
24 they're listed somewhere in there, they're on the
25 statement of financial affairs.

1 Q Can you explain to His Honor why it so
2 happened that even after your review of these two
3 matters were listed on the statement of financial
4 affairs as opposed to the schedule?

5 A Well, I know they're listed on there
6 because anytime there was any ongoing litigation, I
7 put it on the statement of financial affairs.
8 Probably -- I typically would list them as creditors
9 as well. I'm not sure why I did not. I don't
10 recall why they weren't on Schedule F.

11 THE COURT: Did you have his earlier
12 bankruptcy that was filed earlier and dismissed
13 before you?

14 THE WITNESS: I had reviewed it. I don't
15 remember if I had it in front of me when we met.

16 THE COURT: You didn't go over it page by
17 page to see if you covered the same topics?

18 THE WITNESS: I know that I would have.
19 I mean, I don't remember the exact situation. But
20 anytime there was a prior bankruptcy, I always
21 reviewed the prior petition as well.

22 THE COURT: Well, the prior petition did
23 schedule in the schedule of creditors the two
24 lawsuits that were pending in state court. Can you
25 explain why they were not scheduled in the new

1 lawsuit that you went over?

2 THE WITNESS: I know that they were
3 scheduled on Schedule F just because I reviewed both
4 petitions recently because this matter came up. I
5 do not know why they were omitted from Schedule F.
6 To the best of my knowledge, it was just an error on
7 my part.

8 THE COURT: Well, you said you went over
9 the finished product with your client.

10 THE WITNESS: I did.

11 THE COURT: Did your client do something
12 to indicate whether or not what you had prepared was
13 accurate and complete?

14 THE WITNESS: We went through and I asked
15 him -- basically I went through all of the creditors
16 that were listed and asked him if they were supposed
17 to be on there, and then I asked if there were any
18 other creditors. That's basically what I did with
19 every client I met with.

20 THE COURT: Do you remember what he said
21 when you asked him if there were any other
22 creditors?

23 THE WITNESS: I do not remember the
24 specific conversation. I just know that's the way I
25 handled things.

1 THE COURT: If he had told you there were
2 other creditors, would you have added them to the
3 list or omitted them?

4 THE WITNESS: I would have added them.

5 THE COURT: Now, these days, for a while,
6 for several years, all filings have been electronic
7 in our court here.

8 THE WITNESS: That's correct.

9 THE COURT: And signatures on the
10 petitions are electronic signatures, right?

11 THE WITNESS: Um-hmm, yes.

12 THE COURT: So in what way did he signify
13 his approval of the accuracy and completeness?

14 THE WITNESS: I'm pretty sure it was an
15 electronic signature.

16 THE COURT: A what?

17 THE WITNESS: Electronic signature.

18 THE COURT: Well, he doesn't affix it.
19 Who affixes it?

20 THE WITNESS: Well, we would have typed
21 it into the petition.

22 THE COURT: Right. And when you say
23 "electronic signature," apart from typing in his
24 name, what else was done, if anything, to put his
25 electronic signature on it?

1 THE WITNESS: I know there was -- are you
2 referring -- there was a signature page that he had
3 to actually sign to certify that the electronic
4 signature was his.

5 THE COURT: So you retained that? Or
6 that is to say your office retained that?

7 THE WITNESS: They would have, yes.

8 THE COURT: Okay. Did he sign anything
9 like that?

10 THE WITNESS: I don't recall, but I would
11 go ahead and say yes because we wouldn't have been
12 able to file the petition otherwise.

13 THE COURT: Okay.

14 MR. JESSER: And, Judge, may I --

15 THE COURT: Go ahead, counsel.

16 MR. JESSER: -- just inject --

17 THE COURT: You want to what?

18 MR. JESSER: May I just inject for the
19 court's clarification --

20 THE COURT: Go ahead. Let the witness do
21 the injecting.

22 MR. JESSER: Okay.

23 BY MR. JESSER:

24 Q Notwithstanding our -- we attorneys, our
25 high accountability to the court to be factually

1 correct and to be forthright at all times, were you
2 under some pressure in your office at that time
3 regarding your daily or weekly production?

4 A Yeah, I was. I mean, we were putting a
5 lot of hours in just because of the volume right
6 before that launching. General volume business was,
7 I mean, ridiculous. But, I mean, I was within my
8 first year as an associate. I was just -- you know,
9 they said be there 12 hours, I was there 12 hours.
10 So it was -- I was seeing a lot of people.

11 Q And when they said to be there for 12
12 hours, were they saying that with a smile on their
13 face and...

14 A Usually as they left around like 4:00 or
15 so, yeah.

16 Q Okay. Now, you did feel at the time
17 that placing doctor's lawsuits on the statement of
18 financial affairs was legally efficacious, legally
19 permissible?

20 A Well, I listed them on there just to show
21 pending litigation. I believe that I would have --
22 I should have listed them on Schedule F as well,
23 though.

24 Q Did doctor indicate -- strike that.
25 Did doctor express or imply to you

1 that he wanted you to withhold any information from
2 his creditors?

3 A No. I mean, that would definitely stick
4 out in my mind if he had because, I mean, I
5 obviously wouldn't have gone along with anything
6 like that.

7 Q Well, that was my next question. Did
8 doctor request that you do anything that you felt
9 was either not ethical or in violation of the Code
10 of Professional Responsibility?

11 A No, absolutely not.

12 Q Did doctor ever request you to do
13 something or not do something that you felt was
14 contrary to the rights of his creditors?

15 A No, no, he didn't ask me to do anything.

16 Q Did doctor ever say anything to you or
17 imply anything to you that you felt was contrary to
18 your obligations to the United States Bankruptcy
19 Court?

20 A No.

21 Q Did you have any personal interest in
22 secreting any information from doctor's creditors?

23 A No.

24 Q Or from the court?

25 A No.

1 Q Did you make any observations or opinions
2 regarding doctor's comportment, whether he seemed
3 forthcoming or evasive with you or nervous?

4 A No. I remember -- I mean, this is really
5 the only reason why I even remember meeting with
6 him, was because of these cases. And I remembered
7 to ask him -- I asked him about it, but told him,
8 you know, I didn't want to know anything about the
9 state case, just give me as few details as possible.
10 But, I mean, he was -- my recollection is that he
11 was very forthcoming with me. I mean, he was pretty
12 open to talk about it and what his situation was.

13 MR. JESSER: Thank you very much. I have
14 nothing further at this time.

15 THE COURT: Cross?

16 MR. ROBINSON: Yes, Judge, I have a few
17 questions.

18 CROSS-EXAMINATION

19 BY MR. ROBINSON:

20 Q Attorney Sinn, you stated -- as you sit
21 here today, do you believe that pending litigation
22 should be on the schedule of creditors or statement
23 of financial affairs?

24 A Well, I believe it should be on the
25 statement of financial affairs, but I believe that

1 the creditors should also be listed on Schedule F as
2 potential creditors.

3 Q And where did you learn that from?

4 A Basically I just kind of picked --
5 through my year working there -- or just to kind of
6 get into it a little bit, our training wasn't the
7 greatest. You know, it was kind of by trial and
8 error. And I would have eventually figured that out
9 looking at the bankruptcy code and talking to other
10 bankruptcy attorneys.

11 Q Now, prior to filing the bankruptcy
12 petition for Dr. Smith --

13 A Yes.

14 Q -- how long had you been practicing
15 bankruptcy?

16 A At that point, probably seven or eight
17 months.

18 Q Approximately how many Chapter 7s had you
19 filed?

20 A In the little over the year I was there,
21 Chapter 7 petitions, I maybe filed 350, 400. I
22 mean, quite a bit.

23 Q You testified earlier there was
24 approximately 25 bankruptcy attorneys in that
25 Chicago office?

1 A To the best of my recollection, yeah.

2 Q The same office that you work at; isn't
3 that true?

4 A I don't work there anymore. But when I
5 worked there, yeah.

6 Q But the office you worked at when you
7 filed the bankruptcy petition for Dr. Smith?

8 A That's correct.

9 Q Wouldn't it be safe to say that the
10 experience of the attorneys working at that office
11 varied?

12 A Yeah, it did. The majority of the
13 attorneys were less than a year. It was a pretty
14 high turnover rate. But there were several that had
15 been practicing three or four years.

16 Q Wouldn't it also be safe to say that if
17 you had any questions concerning the bankruptcy
18 petition that you could talk to one of the more
19 experienced attorneys?

20 A Absolutely. If I had questions, that's
21 what I'd do.

22 MR. ROBINSON: No further questions,
23 Judge.

24 THE COURT: Redirect?

25

REDIRECT EXAMINATION

BY MR. JESSER:

Q Did the firm have any formal training or in-services?

A Not really. My first day, they just gave me a stack of bills and told me to type a petition and figure it out. My training was basically if I had questions, there were several attorneys I thought I could ask questions to, and they would clarify things for me.

Q How would you characterize the fact that the lawsuits in question were not on the schedule of creditors? As an oversight or...

A I mean, I really just think it was an oversight, I mean, on my part.

MR. JESSER: All right. Thank you.

May I reopen to ask one more question?

THE COURT: Go ahead.

BY MR. JESSER:

Q Did Dr. Smith demonstrate to you any particular layman's knowledge of bankruptcy law by virtue of the fact that he had been through the process once before?

A I mean, I don't recall, so not to my

1 knowledge.

2 MR. JESSER: Thank you.

3 THE COURT: All righty.

4 Are you finished?

5 MR. ROBINSON: I'm finished.

6 THE COURT: May step down. Thank you,
7 sir.

8 THE WITNESS: Thanks a lot.

9 MR. JESSER: May he be excused, Your
10 Honor.

11 THE COURT: Yes, of course.

12 Is that all right with you?

13 MR. ROBINSON: Yes, Judge.

14 THE COURT: All right.

15 You're excused. Thank you.

16 (Witness excused.)

17 THE COURT: And do you have another
18 witness?

19 MR. JESSER: Yes. Our last witness is
20 Dr. Bruce S. Smith.

21 THE COURT: Doctor, will you please take
22 the stand.

23 (Witness sworn.)

24 THE CLERK: Please state your name for
25 the record.

1 THE WITNESS: Bruce Smith.

2 THE CLERK: You may be seated.

3 MR. JESSER: All right. Good afternoon,
4 Doctor.

5 BRUCE SMITH, WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. JESSER:

8 Q I'd like to spend just a few moments with
9 you concerning your background for the court's
10 knowledge. When were you born?

11 A 1952.

12 Q And where did you grow up?

13 A Brooklyn, New York.

14 Q Which part of Brooklyn, New York?

15 A South Brooklyn.

16 Q All right. And in those days, was that a
17 nice neighborhood?

18 A It was the projects.

19 Q And you went to elementary school in
20 South Brooklyn?

21 A Yes.

22 Q By the time you reached high school --
23 was there a high school right across the street from
24 you?

25 A Yes.

1 Q What was the name of that high school, do
2 you recall?

3 A East New York Vocational High School.

4 Q All right. Did you attend that high
5 school?

6 A No, I did not.

7 Q Where did you attend high school?

8 A Brooklyn Technical High School.

9 Q And how long did it take you to commute
10 there?

11 A An hour.

12 Q Each way?

13 A Yes.

14 Q How did you do so?

15 A Subway.

16 Q And when you matriculated at Brooklyn
17 Technical, how many students were there?

18 A About 6,000 boys.

19 Q All right. So it sounds like Lane
20 Technical. Would that be a fair comparison?

21 A There are some similarities between the
22 two schools.

23 Q All right. And when you matriculated
24 there, what was the composition of the school, the
25 racial composition?

1 A Well, I don't know the exact composition,
2 but there were only 50 Black and Puerto Rican
3 students. The rest were white.

4 Q And you were one of the 50?

5 A Yes.

6 Q All right. And by the time you graduated
7 Brooklyn Technical, had you been awarded any
8 scholarships?

9 A I got the National Merit Scholarship.

10 Q All right. And did they have something
11 similar to a major or area of concentration at
12 Brooklyn Technical?

13 A Yes. I majored in structural
14 engineering.

15 Q Was that unusual for a young man from
16 South Brooklyn?

17 A It's unusual for anybody. It's one of
18 the few high schools -- it was one of the six
19 science high schools in New York where you could
20 have a major as a high school student.

21 Q From there did you proceed to college?

22 A Yes. To the University of Connecticut
23 after that.

24 Q And you transferred from UCON?

25 A No. I actually left UCON because I

1 couldn't afford the tuition anymore. My scholarship
2 only covered --

3 THE COURT: Sir, pull the microphone much
4 closer to you.

5 THE WITNESS: I actually withdrew --

6 THE COURT: Slide it closer, please.

7 THE WITNESS: I actually withdrew from
8 the University of Connecticut to join the military
9 to get the GI Bill.

10 BY MR. JESSER:

11 Q At the time that you withdrew, do you
12 recall your grade point average?

13 A I don't remember. I think it was like
14 3.0 or something like that.

15 Q All right. And then which branch of
16 service did you serve?

17 A The U.S. Army.

18 Q And how many years did you serve?

19 A Three.

20 Q This was in wartime?

21 A It was at the end of the Vietnam War.

22 Q In which divisions did you serve?

23 A It was in military intelligence.

24 Q And did that take you to different parts
25 of the homeland or overseas?

1 A Mostly in the U.S. We were assigned to
2 go overseas, but we never went.

3 Q All right. After your second tour, would
4 that be, was completed for three years, then where
5 did you go?

6 A Then I went back to school. I went to
7 the University of Hartford in Connecticut.

8 Q And that was partially -- did they still
9 have the GI Bill in those days?

10 A Yes. That's what I used to go.

11 Q And you graduated from the University of
12 Hartford?

13 A Yes.

14 Q Which year was that?

15 A 1980.

16 Q Did you have enough money to go to
17 medical school at that time?

18 A No.

19 Q What did you do then?

20 A I was a -- well, I did several things.
21 One, I was a high school teacher for about six
22 years.

23 Q And that was back in New York or --

24 A Yes, high school, a New York teacher.

25 Q All right. Were those in easy schools?

1 A Actually, it was a pretty good school.
2 It was Christ the King High School in Middle
3 Village, New York.

4 Q All right. I think that's a pretty
5 prominent basketball school, isn't it?

6 A It's number one in the country.

7 Q Okay. That takes us to about 1986. By
8 the way, I may be a New York attorney, but I don't
9 know the geography that well. Did you say that
10 Brooklyn was next to Queens?

11 A Yes.

12 Q So Secretary Powell -- General Powell
13 grew up nearby?

14 A Yes.

15 Q All right. In 1986 were you able to go
16 to medical school?

17 A Yes.

18 Q And where was that?

19 A At Loyola University.

20 Q Of Chicago?

21 A Yes.

22 Q And when did you graduate?

23 A 1992.

24 Q All right. Did you have any distinctions
25 in medical school?

1 A No.

2 Q All right. Did you proceed directly into
3 residency?

4 A Yes, I did.

5 Q By the way, didn't we miss some civilian
6 employment for a pharmaceutical house?

7 A No. That was after my residency.

8 Q Okay. All right. And which residency
9 did you pursue?

10 A Obstetrics and gynecology.

11 Q And where were you matched into a
12 residency?

13 A Mount Sinai of Chicago.

14 Q All right. And Mount Sinai was in those
15 days affiliated with a medical school, University of
16 Chicago Medical School?

17 A I believe so, yes.

18 Q All right. And did you then complete a
19 residency on a continuous basis or an interrupted
20 basis?

21 A Continuous.

22 Q And how long was that residency?

23 A Four years.

24 Q So that takes us to about 1996 or so?

25 A Yes.

1 Q All right. You're not board certified in
2 obstetrics or gynecology?

3 A Not yet.

4 Q Are you yet board-eligible?

5 A I'm board-eligible.

6 Q But you still have time to take the oral
7 exams?

8 A Yes.

9 Q Have you taken the written exams?

10 A Yes.

11 Q And you've passed those?

12 A I passed it the first time, yes.

13 Q All right. Is it like an integrated
14 OB-GYN, or do you pass writtens in OB and then you
15 pass writtens in GYN?

16 A It's integrated. You take a complete
17 exam, and then you have to present cases, surgical
18 cases and obstetric cases orally.

19 Q Okay. So at the end of this journey of
20 Brooklyn Technical and UCON and the University of
21 Hartford and Loyola, some years later, 1996, you
22 went in -- in Mount Sinai in 1996 you went into
23 practice?

24 A Yes.

25 Q Can you explain to His Honor how your

1 practice evolved from one location to another and
2 the medical staffs to which you were admitted.

3 A I started at Trinity Hospital on the
4 south side. I worked for Dr. Kennedy as an
5 associate.

6 Q And you were on the medical staff at
7 which -- at Trinity?

8 A At Trinity and Michael Reese Hospital.

9 Q Where was your office at Trinity?

10 A 93rd Street.

11 Q Was that an outbuilding or a doctor's
12 building?

13 A It's a doctor's building across the
14 street.

15 Q All right. You were his associate. I
16 don't know who he is. Was he an older practitioner?

17 A Yes.

18 Q And then did you move into another
19 practice or your own practice?

20 A No. I went to work at Michael Reese
21 Hospital as an employee at the hospital. I stayed
22 there for two years. Then I moved to Streator,
23 Illinois, and started my own practice.

24 Q All right. Now, Michael Reese years ago
25 was one of the most prominent maternity centers in

1 the city?

2 A Yes.

3 Q All right. Then somewhere in this period
4 of time was there Glaxo or the pharmaceutical --

5 A Yes. I was on the National Speakers
6 Bureau for GlaxoSmithKline.

7 Q What does that mean, National Speakers
8 Bureau?

9 A I went around the country. I was the
10 expert from out of town that gave lectures on the
11 various products to doctors.

12 Q Were there any other medical staffs on
13 which you were attending physician other than
14 Trinity and Reese?

15 A Lincoln Park Hospital.

16 Q And that's the old Grant Hospital?

17 A Yes.

18 Q Okay. During your residency at Sinai,
19 did you serve an underserved population?

20 A Yes.

21 Q Did you serve an affluent clientele?

22 A No. Well, a few. A few baseball
23 players, I took care of their wives.

24 Q All right. But, otherwise, what types of
25 patients did you deliver and tend to in their

1 gynecological disorders?

2 A Mostly public aid patients or uninsured
3 patients.

4 Q Was this the experience you had at
5 Trinity and at Reese as well?

6 A Yes.

7 Q Were many of those patients appreciative?

8 A Most.

9 Q Were some of those patients very
10 difficult?

11 A Some.

12 Q Let's just talk for a moment or two about
13 your current practice in Streator, Illinois. Where
14 is Streator, Illinois?

15 A It's in LaSalle County. It's about an
16 hour-and-a-half south of Chicago.

17 Q Are there many obstetricians in Streator,
18 Illinois?

19 A No, there aren't. There's three. I'm
20 one of the three.

21 Q And there have been times I've asked you
22 to come to Chicago, but you've been on call?

23 A Yes.

24 Q And that's a problem?

25 A Yes. It's very difficult to find

1 coverage because only one of the other obstetricians
2 actually has obstetrical privileges. The other one
3 is retired, semi-retired.

4 Q You've had a license to practice in
5 Illinois since 1990 something; is that correct?

6 A That's correct.

7 Q I'm losing track of the years here.

8 A I guess since 1994.

9 Q Has your -- are you in good standing with
10 the Illinois State Department of Financial and
11 Professional Regulation Division of Professional
12 Regulation?

13 A Yes, I am.

14 Q Has that good standing ever been
15 interrupted?

16 A No.

17 Q And do you have an active obstetrical and
18 gynecological practice in Streator, Illinois?

19 A Yes.

20 Q Now, you in the year 2004 sought
21 bankruptcy relief in the United States Bankruptcy
22 Court for the Northern District of Illinois?

23 A That's correct.

24 Q And we've been through the exhibits
25 before coming to court. The voluntary petition you

1 filed with the assistance of this Legal Finders
2 thing was what you understand to be Exhibit 1 which
3 His Honor has?

4 A Yes.

5 Q And that petition was discharged by the
6 court?

7 THE COURT: Dismissed.

8 MR. JESSER: Dismissed --

9 THE WITNESS: Dismissed.

10 MR. JESSER: -- by the court.

11 THE WITNESS: Yes.

12 BY MR. JESSER:

13 Q But in the year 2005, apparently you
14 reassessed the need to again seek bankruptcy relief;
15 is that correct?

16 A That's correct.

17 Q Now, the first firm to which you went, I
18 believe it was on North Wells Street, was a
19 different firm from that firm in which Mr. Sinn
20 practiced?

21 A Yes.

22 Q Okay. And did you visit this second
23 Legal Finders firm for the 2005 petition that came
24 before His Honor as the first petition, the '04 had
25 come before His Honor, did you visit this Legal

1 Finders firm in the year 2005 once or more than
2 once?

3 A Just once.

4 Q Okay. Did you have any intention -- and
5 I'll have to dissect this question a little. Did
6 you have any intention to defraud or mislead or
7 secrete from your creditors the fact that you were
8 seeking bankruptcy relief for a second time?

9 A No. I wanted to make sure that they all
10 knew.

11 Q Did you ever express or imply to Mr. Sinn
12 that you wanted something covered up or not said or
13 put in the wrong place so that Mr. Robinson's
14 clients wouldn't find out about the second
15 bankruptcy?

16 A No, I didn't.

17 Q Did you have any intention to mislead or
18 secrete from Mr. Robinson or from Judge Schmetterer,
19 although that doesn't make any sense because the
20 case was coming before him again, any information
21 about your creditors?

22 A No.

23 Q Having now gone through bankruptcy relief
24 for the second time, did you consider yourself some
25 sort of a lay expert on bankruptcy law?

1 A No, not at all.

2 Q Did you rely on what Mr. Sinn was -- on
3 the counseling and the advice he was providing to
4 you?

5 A Yes.

6 Q And whether you signed the second
7 petition, which was the 2005 petition, manually
8 and/or electronically, as you sit here today, you're
9 not backing away -- strike that.

10 You're not denying that it's your
11 petition?

12 A No. I was under the understanding that
13 everything that was on the first petition was on the
14 second petition and everything was included that I
15 gave them, and that's what I signed.

16 Q And on the first petition in 2004, you
17 now have the knowledge that Mr. Robinson was listed
18 under the creditors section?

19 A Yes.

20 Q Okay.

21 A And I did not understand the difference
22 between sections. I just thought it was a
23 bankruptcy filing and everybody on the paper which I
24 was asked to sign was notified and included.

25 Q And before you signed the second petition

1 which you filed in 2005, you indeed --

2 MR. JESSER: Forgive me if I'm leading,
3 Judge.

4 BY MR. JESSER:

5 Q But you indeed observed that Ms. Tidwell
6 and Ms. Sterling-Ahalla were listed within the four
7 corners of the 2005 voluntary petition?

8 A Yes.

9 Q You didn't realize then that where they
10 were listed would become a problem and end up in
11 court today?

12 A No, not whatsoever.

13 Q Did you in the military as a military --
14 did you say intelligence officer?

15 A Yes.

16 Q Did you have to -- well, to join the
17 United States Army, did you have to take an oath?

18 A Yes.

19 Q Did being a military officer require you
20 to swear to any additional code of conduct?

21 A Yes.

22 Q What was that code of conduct?

23 A I'm sorry, Your Honor.

24 Q Are you on call right now?

25 A No. I just leaned on the button.

1 Q What was that code of conduct?

2 A Just a standard U.S. Army military code
3 of conduct.

4 Q Did Mr. Sinn suggest to you any clever
5 ways of not having Ms. Tidwell or
6 Ms. Sterling-Ahalla not find out about the second
7 bankruptcy?

8 A No, not at all. As I stated before, I
9 wanted everybody to know.

10 THE COURT: Sir, those cases Mr. Robinson
11 had filed against you in state court, they were for
12 a medical malpractice, were they, or not?

13 THE WITNESS: No, not medical
14 malpractice.

15 THE COURT: They were for something else?

16 THE WITNESS: Yes.

17 THE COURT: Did you have any form of
18 insurance that defended you for those cases?

19 THE WITNESS: I had insurance that
20 defended me for legal costs, but not for --

21 THE COURT: Say again. Louder, please.

22 THE WITNESS: I had insurance. But the
23 way the insurance was interpreted, they would
24 provide legal counsel but not pay any claims because
25 it wasn't --

1 THE COURT: Did they provide counsel?

2 THE WITNESS: Yes, they did.

3 THE COURT: And when you say it was
4 interpreted that way, was that by a declaration of a
5 court or by the insurance company's point of view?

6 THE WITNESS: By the insurance company.
7 It was pretty gracious on their part because I had
8 actually fallen out of the grace period for the
9 insurance policy.

10 THE COURT: So the lawyer defending you
11 in state court in those cases brought by
12 Mr. Robinson, they were insurance-funded lawyers?

13 THE WITNESS: Yes.

14 THE COURT: Did you have -- what did you
15 call the insurance policy that they defended you
16 under?

17 THE WITNESS: It was under a medical
18 malpractice insurance policy, but it was a
19 claims-made policy and not an occurrence policy,
20 which means that after a certain time frame, any
21 claims that came in would not be covered unless I
22 had purchased a tail.

23 THE COURT: Did you purchase a tail?

24 THE WITNESS: No, I did not.

25 THE COURT: Were your contacts with his

1 clients while you were in practice where?

2 THE WITNESS: At Kennedy Medical Center
3 as an employee of Dr. Kennedy.

4 THE COURT: Did Dr. Kennedy's practice
5 have any insurance --

6 THE WITNESS: Yes.

7 THE COURT: -- that he provided for his
8 employees?

9 THE WITNESS: Dr. Kennedy -- this is a
10 bone of contention. Dr. Kennedy -- I was insured by
11 a policy purchased by Dr. Kennedy. But when the
12 policy was up, Dr. Kennedy chose not to purchase the
13 tail for that policy, and --

14 THE COURT: And then --

15 THE WITNESS: -- I was on my own after
16 that.

17 THE COURT: And you went to work where?

18 THE WITNESS: At Michael Reese Hospital.

19 THE COURT: Did the hospital provide you
20 with any insurance?

21 THE WITNESS: Yes, they did.

22 THE COURT: Starting -- which covered you
23 from what date?

24 THE WITNESS: From the day I started
25 working for them.

1 THE COURT: Did you file any actions
2 against the insurance company to seek a declaration
3 that it covered you for any recovery that might come
4 against you for the suits --

5 THE WITNESS: No, I didn't.

6 THE COURT: -- represented by
7 Mr. Robinson?

8 THE WITNESS: No, Your Honor.

9 THE COURT: You did not?

10 THE WITNESS: At this time, Your Honor, I
11 was broke and unable to afford an attorney. And at
12 the same time, my son was in the ICU at
13 Northwestern.

14 THE COURT: Okay.

15 THE WITNESS: So I was, you know, unable
16 to pursue any --

17 THE COURT: You're telling me that if for
18 any reason the suits got revived in state court,
19 you'd be represented by insurance-funded lawyers.
20 But if you lost, the insurance company would not pay
21 for anything against you; is that what you're
22 saying?

23 THE WITNESS: That's correct.

24 THE COURT: All right.

25 BY MR. JESSER:

1 Q And those attorneys are Johnson & Bell?

2 A Yes.

3 Q And were the two cases which are being
4 mothballed down in the bankruptcy section to be
5 revived, that would be your personal attorney?

6 A Yes.

7 Q I feel like Mike Ditka and forgot his
8 whole family at the Hall of Fame. I never asked you
9 about your family. You're married?

10 A Yes.

11 Q And you have children?

12 A Yes.

13 Q And what are their ages?

14 A Eleven, two, and one.

15 Q Nine months?

16 A Yes.

17 Q All right. And which hospitals are you
18 on staff at in LaSalle County?

19 A Only St. Mary's.

20 Q Is that the only hospital in Streator?

21 A Yes, it is.

22 Q What is high-risk obstetrics?

23 A High-risk obstetrics basically is
24 obstetrics involving patients who are outside the
25 normal range, meaning a normal pregnancy, nine

1 months, no medical problems, no prior history of
2 obstetrical problems.

3 Q And occasionally even in the finest
4 facilities these can lead to catastrophic deliveries
5 and catastrophic lawsuits; is that correct?

6 A That's correct.

7 Q How many years have you dealt with
8 high-risk pregnancy?

9 A Eleven years now.

10 Q And did you deal with it in training as
11 well?

12 A Yes.

13 Q And does your practice now include
14 high-risk pregnancy?

15 A Yes, it does.

16 MR. JESSER: Your Honor, even though as
17 part of their complaints the plaintiffs alleged
18 intentional conduct on the part of doctor toward
19 them, Your Honor told us months ago you would not be
20 receiving any evidence concerning the underlying
21 facts, so I'm not going there.

22 THE COURT: Sir, I'm not going to stop
23 you from offering into evidence -- you want subject
24 to the possibility that your opponent may object and
25 I'll have to pass on objections.

1 MR. JESSER: All right.

2 THE COURT: But it's clear, of course,
3 that in no way am I going to decide the issues
4 pending in the state court case. But if you thought
5 they were relevant, don't let anything I may have
6 said some time ago dissuade you from --

7 MR. JESSER: All right. Well --

8 THE COURT: -- putting it on here, okay?

9 MR. JESSER: All right.

10 BY MR. JESSER:

11 Q Doctor, as part of her amended complaint
12 before Judge Schmetterer, Sandra Sterling-Ahalla has
13 alleged, among other things, that you committed
14 intentionally sexual assault against her; is that
15 correct? Is it correct that you committed on an
16 intentional basis any -- putting her in apprehension
17 of being battered or that you inappropriately or
18 maliciously touched her?

19 MR. ROBINSON: Object to that, Judge. I
20 object to that question, Judge.

21 THE COURT: What is your objection?

22 MR. ROBINSON: Well, one of the bases is
23 relevance. He's having the witness make testimony
24 as to conclusion of law.

25 THE COURT: Not yet. Anything else?

1 MR. ROBINSON: No, Judge.

2 THE COURT: Why do you think it's
3 relevant, counsel?

4 MR. JESSER: Because it's -- I'm reciting
5 it out of the plaintiffs' own complaint.

6 THE COURT: I know.

7 MR. JESSER: I don't have to --

8 THE COURT: Why do you think it's
9 relevant here?

10 MR. JESSER: I don't have to go there,
11 Judge. I appreciate the latitude you've given me,
12 but I can withdraw the question.

13 THE COURT: Very well.

14 MR. JESSER: I have nothing further at
15 this time.

16 THE COURT: Cross?

17 MR. ROBINSON: Yes, Judge, a couple of
18 quick questions.

19 CROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q Dr. Smith, by the time you filed your
22 2005 bankruptcy petition you were aware of the
23 pending lawsuits by Trina Tidwell and Sandra
24 Ahalla-Sterling; is that correct?

25 A That's correct.

1 Q And your attorneys in the underlying
2 state case were Johnson & Bell; wasn't that correct?

3 A Yes.

4 Q And when you filed that petition in
5 September of '05, did you inform them about that
6 bankruptcy petition?

7 A Yes, I did.

8 Q Can you recall approximately when you let
9 them know you filed that bankruptcy petition?

10 A No. I don't remember.

11 Q You don't remember?

12 Would it be in October?

13 A I don't remember exactly when it was.

14 Q December?

15 A I just said I don't remember when it was.

16 MR. ROBINSON: No further questions,
17 Judge.

18 REDIRECT EXAMINATION

19 BY MR. JESSER:

20 Q But you are aware that --

21 THE COURT: Wait, wait.

22 Have you finished your
23 cross-examination?

24 MR. ROBINSON: Yes, that's all I'm going
25 to take.

1 THE COURT: Okay.

2 Redirect. Go ahead.

3 BY MR. JESSER:

4 Q You are aware that Mr. Robinson has
5 admitted into evidence without objection on our part
6 a notice to Mr. Robinson from Johnson & Bell which
7 Ms. Jones testified she received on December 23,
8 2005; is that correct?

9 A That is correct.

10 Q And that pertained to notifying
11 Mr. Robinson of the bankruptcy?

12 A Yes, I am aware that he was notified.

13 MR. JESSER: Thank you.

14 THE COURT: Sir, after you filed this
15 bankruptcy case, the second bankruptcy case, were
16 there any sessions in state court on the cases
17 pending there?

18 THE WITNESS: Yes, there were.

19 THE COURT: Were you present in state
20 court?

21 THE WITNESS: Yes, I was.

22 THE COURT: Approximately how long after
23 you filed bankruptcy was the first time you remember
24 being in state court on one of these cases?

25 THE WITNESS: You know, I don't really

1 remember, Your Honor.

2 THE COURT: A couple weeks or months or
3 days?

4 THE WITNESS: It must have been months, I
5 think.

6 THE COURT: Okay. Was it before or after
7 the notice went out by your state court lawyers to
8 mothball these state court cases?

9 THE WITNESS: In this particular case, I
10 don't think I was in court again.

11 THE COURT: Well, after you filed
12 bankruptcy, did you go to court on those state court
13 cases?

14 THE WITNESS: On these? No. On these
15 two particular cases? No.

16 THE COURT: No?

17 Okay. Do you have any more
18 questions of the witness?

19 MR. ROBINSON: No further questions,
20 Judge.

21 THE COURT: Do you have any more
22 questions of the witness?

23 MR. JESSER: No, Your Honor.

24 THE COURT: You may step down, sir.
25 Thank you very much.

1 (Witness excused.)

2 THE COURT: Do you have any more evidence
3 to offer?

4 MR. JESSER: No, Your Honor. The defense
5 rests.

6 THE COURT: You rest.

7 And do you have any rebuttal?

8 MR. ROBINSON: No rebuttal, Your Honor.

9 THE COURT: You rest in rebuttal?

10 MR. ROBINSON: Yes.

11 THE COURT: I'll hear your respective
12 final argument.

13 Plaintiff.

14 MR. ROBINSON: Yes, Judge.

15 Judge, as mentioned in my findings
16 of fact and conclusions of law, Judge, the purpose
17 of --

18 THE COURT: May I just stop -- start on
19 an issue?

20 MR. ROBINSON: Yes, Judge.

21 THE COURT: The reason I went into
22 insurance was that there would be a different sort
23 of issue than anybody has briefed if there were
24 insurance that could pay any judgment. There's a
25 line of cases the circuit has given us that might be

1 relevant in such a case.

2 Now, I have had testimony about
3 being defended by a policy that has no possibility,
4 the witness said, of actually paying off a judgment.
5 Would you start by telling me whether or not you
6 feel any of that is relevant to this case. I went
7 into it only because there's a line of cases that
8 might make it relevant if there was insurance that
9 could pay a judgment. Do you feel it's relevant
10 here or not?

11 MR. ROBINSON: Judge, no, I don't feel it
12 is relevant. I am slightly familiar with that line
13 of cases, Judge.

14 THE COURT: Pardon me?

15 MR. ROBINSON: I am slightly familiar
16 with the ruling in that line of cases, Judge,
17 particularly as it pertains to medical malpractice.
18 Obviously we're claiming an intentional tort at this
19 particular time, Judge. So I don't really feel it's
20 relevant.

21 THE COURT: Okay.

22 And I don't suppose you think it is
23 either?

24 MR. JESSER: No, Your Honor.

25 THE COURT: All right.

1 | Go ahead with your argument, folks.

2 MR. ROBINSON: Yeah. Judge, as I started
3 to say when I -- in the findings of fact and
4 conclusions of law, Judge, obviously the purpose of
5 requiring a debtor to list creditors with their
6 proper --

7 THE COURT: Use the microphone. Speak
8 closer to the --

9 MR. ROBINSON: Their proper --

10 THE COURT: -- microphone.

11 MR. ROBINSON: -- mailing address, Judge,
12 is to afford us a due process and due notice to be
13 able to object, Judge, to any discharge of any
14 pending claims, Judge, as far as that is concerned.

15 Judge, as was testified to, a notice
16 was faxed over to the Law Offices of Darryl Robinson
17 on December 23rd, although he was on vacation and
18 didn't receive knowledge of such notice until after
19 January the 2nd in terms of that. As the case law
20 basically supports, Judge, there's a difference
21 between notice and knowledge. Because a notice came
22 over doesn't necessarily mean that the plaintiff has
23 knowledge of the pending bankruptcy. And as the
24 case law supports in the in re Walker case, Judge --

25 THE COURT: Well, you had both notice and

1 knowledge, didn't you, two weeks ahead of the
2 discharge?

3 MR. ROBINSON: I understand, Judge. But,
4 obviously, as case law supports, Judge, the court
5 must take into -- the total circumstances as far as
6 that is concerned. And in looking at the total
7 circumstances, the court must look at the knowledge
8 of the parties, the opportunity that they may have
9 to investigate the bankruptcy and find out what
10 motions to file, if any, what adversary complaints
11 they can file, if any. In the Walker case, if this
12 court will remember, the individuals --

13 THE COURT: What case?

14 MR. JESSER: In re Walker case, Judge.
15 The individuals had --

16 THE COURT: That was one of my opinions?

17 MR. ROBINSON: I don't know if it's one
18 of your opinions, Judge?

19 THE COURT: You cited that in your --

20 MR. ROBINSON: Yes, I did. I cited that.

21 THE COURT: Walker. Okay.

22 MR. ROBINSON: In re Walker, Judge. And
23 I cited that. And in that particular case, it was
24 20 days, Judge, before the time elapsed to contest
25 discharge. And the court in that particular case

1 says that 20 days was not enough. In this -- in our
2 particular case, we're saying that we received
3 knowledge within six days. So if 20 days is not
4 enough in Walker, I don't understand how the
5 defendant can think six days is enough,
6 particularly, Judge --

7 THE COURT: In theory at least you could
8 have rushed into bankruptcy court and made a motion
9 to extend your time to file an adversary.

10 MR. ROBINSON: In theory, obviously,
11 Judge. But in terms of --

12 THE COURT: Now, what have you to say
13 about that theoretical possibility?

14 MR. ROBINSON: Well, in practice, Judge,
15 it doesn't necessarily. In theory, obviously, it
16 could have happened. In Walker it could have
17 happened. But in -- Judge, the court has to take in
18 the totality of the circumstances. For example, the
19 knowledge of attorneys. There's no bankruptcy
20 attorneys in that office on 1505 East Bankruptcy
21 Court (sic), so an investigation would have to
22 occur. So, in theory, an investigation would have
23 to occur within those six days to understand which
24 motions would have to be filed.

25 THE COURT: What kind of an

1 investigation?

2 MR. ROBINSON: An investigation into the
3 bankruptcy, what type of bankruptcy it is, what
4 claims that needed to be made. An attorney can't
5 just run into bankruptcy court and file any motion.

6 THE COURT: What investigation would have
7 to be made other than just getting a bankruptcy
8 lawyer that knew what he or she was doing?

9 MR. ROBINSON: Well, I understand that,
10 Judge, in terms of that.

11 THE COURT: I'm not being critical --

12 MR. ROBINSON: Right, I understand.

13 THE COURT: -- of a state court
14 practitioner that is not familiar with the details
15 of bankruptcy.

16 MR. ROBINSON: Right. I understand that,
17 Judge.

18 THE COURT: I did a lot of practice
19 myself outside of bankruptcy and had virtually no
20 bankruptcy experience when I got this job.

21 MR. ROBINSON: Right. I understand,
22 Judge.

23 THE COURT: But I learned some more about
24 the bankruptcy at that point.

25 MR. ROBINSON: I do understand that,

1 Judge.

2 THE COURT: But isn't the lawyer in state
3 court someone that would have to get some bankruptcy
4 lawyer to help him out and interpret what the
5 consequences were of everything?

6 MR. ROBINSON: Yes, Judge, that would be
7 a part of the investigation as far as that is
8 concerned, along with, Judge, like I said, the
9 totality of the circumstances, managing of the
10 caseload, dealing with every other situation in
11 terms of -- at that particular time. Six days,
12 Judge, still is not enough time to file a motion in
13 bankruptcy court as far as contesting discharge.
14 That still is our position as far as that is
15 concerned, Judge.

16 THE COURT: Why did you take so long to
17 file your litigation in federal court to upset the
18 discharge?

19 MR. ROBINSON: After --

20 THE COURT: In other words, is there
21 anything in this record that explains the answer to
22 that question?

23 MR. ROBINSON: No, there's not anything
24 in this record that explains the answer to that
25 question. The adversary complaint in federal court

1 was not really filed until after the attorneys for
2 Dr. Smith moved to dismiss the case in state court
3 in terms of that, and that's when -- for example,
4 the bankruptcy petition was filed, it was
5 transferred over to the bankruptcy calendar. The
6 attorneys for the plaintiff was not aware that the
7 bankruptcy had been discharged, they hadn't received
8 any information. They didn't even become aware that
9 the bankruptcy had been discharged until the
10 attorney for Dr. Smith had filed a motion to have
11 the case dismissed in state court months after the
12 discharge had taken place as far as that is
13 concerned.

14 So in addition to that, Judge,
15 Dr. Smith -- these cases were pending when he filed
16 his petition in September. His attorneys were
17 Johnson & Bell, the same attorneys who filed a
18 motion to transfer to the bankruptcy calendar in
19 December, almost three months after he had initially
20 filed his notice for bankruptcy and --

21 THE COURT: What's your explanation --
22 what's your argument, that is to say, as to why they
23 waited three -- almost three months before filing a
24 motion to mothball the cases on the bankruptcy
25 calendar?

1 MR. ROBINSON: We think the evidence,
2 Judge, basically supports and is all
3 circumstantial -- the evidence basically supports is
4 that they were trying to get the case discharged
5 before the attorneys had an opportunity to object.
6 Why would they file a motion for a hearing on
7 January the 7th, three days before the time lapsed
8 for discharge and ten days before the case was going
9 to ask leave -- be discharged. What were they
10 trying to gain by doing that?

11 THE COURT: Three days before the
12 deadline for filing an adversary --

13 MR. ROBINSON: An adversary --

14 THE COURT: -- to object to discharge.

15 MR. ROBINSON: Yes, Judge, three days
16 before the deadline and ten days before the actual
17 discharge. What were the attorneys trying to gain
18 at that particular point by transferring the case at
19 that stage of the game? It just doesn't add up.
20 It's all circumstantial evidence, Judge, but we --

21 THE COURT: What do you argue is inferred
22 by the circumstantial evidence?

23 MR. ROBINSON: We're arguing that -- we
24 infer that circumstantial evidence that, in fact,
25 that they intend to deny the plaintiffs' proper

1 notice in being able to file that adversary.

2 THE COURT: You say you give -- you used
3 the word "proper."

4 MR. ROBINSON: Proper notice means --

5 THE COURT: What do you mean by "proper
6 notice"?

7 MR. ROBINSON: Notice in -- proper
8 notice, Judge, in terms of notice to have enough
9 time to contest a discharge.

10 THE COURT: How much time would have been
11 enough time?

12 MR. ROBINSON: Probably two months would
13 have been enough time.

14 THE COURT: How do we pick two months as
15 opposed to two days or three months or one month?

16 MR. ROBINSON: Well, Judge, it's the
17 timing of the notice. They filed it on
18 December 23rd. There's a great likelihood that no
19 one would have been in the office on the 23rd as far
20 as that is concerned. It was around the holiday
21 time. So if it was --

22 THE COURT: Part of this is your argument
23 about when they filed the notice near the holiday --
24 in the holiday season.

25 MR. ROBINSON: Yes, as part of the notice

1 to -- as far as that is concerned, Judge. Not only
2 that, because, as a practicing attorney, I do know
3 those tricks take place. So it was a lot of
4 personal knowledge, too. Typically attorneys file
5 motions during the holidays when attorneys don't
6 have an opportunity. It may not be in the spirit of
7 practicing law, but it does happen, particularly in
8 state court as far as that is concerned.

9 THE COURT: Oh, not only in state court.

10 MR. ROBINSON: So that is our argument,
11 Judge, and the terms on the issue on notice.

12 On the issue of fraud, Judge, we
13 would have never expected Attorney Sinn to get up
14 here and say, "Yes, I committed fraud." I mean, he
15 would have more issues to deal with in terms of
16 that. But we believe that the bankruptcy petition
17 stands on its own as far as that is concerned.

18 There were six --

19 THE COURT: Do you have any theories
20 other than fraud?

21 MR. ROBINSON: Do I have any theories
22 other than fraud? No. No, Judge, no theories other
23 than fraud that we can stand on.

24 THE COURT: Hmm?

25 MR. ROBINSON: No theories other than

1 fraud that we can stand on, none that I'm aware of.
2 I mean, because -- if, in fact, it was a simple
3 mistake, as the law says, if it was a simple
4 mistake, it doesn't define -- the case law doesn't
5 define what a mistake is, then that wouldn't
6 necessarily be fraud.

7 But we would -- we would argue,
8 Judge, that if he had left one lawsuit out or two
9 lawsuits out of the schedule of creditors, then that
10 would be a mistake. But to leave them all out, that
11 leans more towards fraud, Judge.

12 THE COURT: You're referring to the fact
13 that in the second case --

14 MR. ROBINSON: Yes, the second.

15 THE COURT: -- he filed -- he
16 scheduled -- not scheduled, but he put in his
17 statement of affairs six lawsuits?

18 MR. ROBINSON: Yes, six lawsuits.

19 THE COURT: None of which were scheduled.

20 MR. ROBINSON: None of them which were
21 scheduled.

22 THE COURT: Did you -- in the first case
23 he didn't schedule any of them. What he did was to
24 schedule you as a lawyer.

25 MR. ROBINSON: Right. Exactly. You mean

1 in the 2004 bankruptcy petition.

2 THE COURT: Yes. So in the first case he
3 did not schedule his pending cases, did he?

4 MR. ROBINSON: Schedule of creditors, I
5 don't have --

6 THE COURT: I can't hear you.

7 MR. ROBINSON: I don't have the 2004 with
8 me, Judge, but...

9 THE COURT: Well, he just scheduled your
10 name.

11 MR. ROBINSON: Okay.

12 THE COURT: So you got notice of the
13 first bankruptcy.

14 MR. ROBINSON: I can't recollect whether
15 or not I did get --

16 THE COURT: Well, I'm not --

17 MR. ROBINSON: -- notice, Judge.

18 THE COURT: -- asking you to testify. At
19 least --

20 MR. ROBINSON: Yeah, I --

21 THE COURT: -- you were put into a
22 position where you could get such notice.

23 MR. ROBINSON: Right. Exactly.

24 THE COURT: Go ahead, counsel.

25 MR. ROBINSON: So, Judge, based on that

1 alone in terms of that, the fact that all pending
2 lawsuits were not scheduled on the creditors, we
3 think that leans more to intent. He intentionally
4 did that.

5 THE COURT: Whose intent?

6 MR. ROBINSON: The intent of Bruce Smith
7 and/or his attorneys at --

8 THE COURT: Do you attribute that attempt
9 to Mr. Sinn, the lawyer?

10 MR. ROBINSON: Yes, Judge.

11 THE COURT: Why?

12 MR. ROBINSON: Well, because he
13 purposefully did it, Judge. He had an opportunity
14 as far as -- he had filed -- he even testified that
15 he had filled out about 350 Chapter 7s, that, in
16 fact, as he sat here today that he believed it
17 should be scheduled, that he was in an office with
18 25 attorneys, someone with great experience. So if
19 he had any questions at that time, he could have
20 asked someone. So it's not like the knowledge was
21 not available to him, Judge. So we believe --

22 THE COURT: Well, he didn't claim that he
23 didn't know what to do. Didn't he say he just made
24 a mistake? And he -- and then didn't he also say
25 that he showed the petition to the doctor --

1 MR. ROBINSON: Yes.

2 THE COURT: -- and asked him if it was
3 accurate and complete, and the doctor -- if the
4 doctor had said no, then he wouldn't have filed it?

5 MR. ROBINSON: He didn't say if the
6 doctor had objected to certain things. He didn't
7 say what the doctor would have objected to in terms
8 of that. My inclination would be if the doctor
9 said, well, no, those are not some of my creditors,
10 then maybe he wouldn't have filed it in terms of
11 that, not any pending lawsuit creditors.

12 THE COURT: Well, I thought he asked the
13 -- he said he asked the doctor whether the schedules
14 were accurate and complete.

15 MR. ROBINSON: Yes.

16 THE COURT: And if the doctor had said,
17 no, they're not accurate or complete, he wouldn't
18 have filed it.

19 MR. ROBINSON: That's true, Judge. That
20 is absolutely true, not knowing what the
21 underlying intent of --

22 THE COURT: Anything else, counsel?

23 MR. ROBINSON: That will be all, Judge.

24 THE COURT: Your argument, counsel.

25 MR. JESSER: As the court is well aware,

1 for generations in the law, fraud has to be alleged
2 and proven with great factual specificity. To the
3 contrary, Mr. Sinn's testimony and Dr. Smith's
4 testimony that there was no fraudulent intention, no
5 intention to deceive or to secrete is
6 uncontroverted. The plaintiff has adduced no
7 testimony whatsoever or other evidence to refute the
8 clear and convincing -- and we don't back away from
9 our burdens, the burdens that have shifted, the
10 clear and convincing testimony of both defense
11 witnesses that this was an honest mistake, if a
12 mistake at all because Mr. Sinn testified he thought
13 in good faith he was listing the specific lawsuits
14 in the statement of financial affairs correctly.

15 It would have been another matter
16 had there been no mention of these lawsuits. But
17 the court sees in the exhibits that have been
18 received into evidence clear explanations and
19 details.

20 And even to be more semantical, I
21 really haven't tried to justify in these last few
22 months putting the lawsuits on the statement of
23 financial affairs. But it's easy for the layperson,
24 or even Steve Jesser who has been practicing 35
25 years, to make a mistake when the statement of

1 financial affairs asks for the court, civil; where,
2 Cook; status, pending. The doctor cannot, I would
3 submit, Your Honor, be expected to know the
4 intricacies of the Bankruptcy Code, as even I don't
5 know, that they should have been alternatively
6 scheduled in the creditor list.

7 Another area, Judge, is a difference
8 in styles of counsel and myself. And I've said here
9 in open court in past months, he's been a very
10 worthy adversary, and we've been very civil to each
11 other. But I have no secretary, but I have for
12 years called my receptionist. And no matter where I
13 am, since like it or not I go 365, I ask her what is
14 in the mail today. This is a routine with us. She
15 doesn't read me my junk mail. She reads me anything
16 that she thinks might be of any importance. Now,
17 with my faxes, they go into my e-mail. So I carry
18 my faxes 365.

19 THE COURT: Do you have any --

20 MR. JESSER: I just don't close up the
21 shop on December 22nd and come back to the shop on
22 January 6th.

23 THE COURT: I understand. Counsel, let's
24 assume somebody wanted to make sure that the state
25 court lawyer didn't have enough practical time to

1 come in under the wire, and by the deadline find out
2 what bankruptcy is all about and get someone to file
3 an adversary complaint. You can understand that one
4 way of doing that is by not scheduling the creditor,
5 right?

6 MR. JESSER: You said the state court
7 lawyer?

8 THE COURT: Yeah. If somebody wanted to
9 keep the state court lawyer from finding out about
10 the case, the bankruptcy case, until it was too late
11 to do something about it, one way would be not to
12 schedule them so that it would deprive them of the
13 ordinary period of notice from the clerk's office.

14 MR. JESSER: I'm with you on your
15 hypothetical.

16 THE COURT: Well, in this case, why is it
17 that the state court lawyer took so much time to
18 notify this plaintiffs' lawyer about the pendency of
19 the bankruptcy case?

20 MR. JESSER: I don't have --

21 THE COURT: We don't have any answer in
22 the record, do we?

23 MR. JESSER: Well, I don't have a precise
24 answer to the court's question, but three months'
25 time when even thereafter -- let's go with your

1 hypothetical. Mr. Robinson returns to his office
2 after New Year's, he's in court on January 6th, the
3 case isn't discharged by --

4 THE COURT: His deadline is January 9th,
5 right?

6 MR. JESSER: Well, I stood here two weeks
7 ago, Judge, and Your Honor said, "Where's the
8 notice?" I said, "I issued it last night." Your
9 eyebrows went up. But as a solo practitioner,
10 believe me that happens. Even though you and I
11 were -- and you were the First Assistant State's
12 Attorney. There are hundreds of attorneys in our
13 office. When you're in solo practice, things get
14 done -- and I think Mr. Robinson would admit, things
15 get done at the last minute, as with his 364th-day
16 filing of the adversary proceedings.

17 I hope I've been responsive, but I
18 don't think three months ascribes any bad motives.
19 He's taken on a huge burden by alleging fraud, so --
20 he hasn't met this burden. There's been no -- not
21 only no factual specificity of what fraud, he
22 hasn't -- all he can stand up here and say is,
23 "Well, it goes to." And maybe it's just a figure of
24 speech. I found it rather odd in the plaintiffs'
25 case that they referred to --

1 THE COURT: What figure of speech? What
2 figure of speech?

3 MR. JESSER: Well, they kept referring to
4 the attorney, the plaintiffs' attorney. The
5 attorney is Mr. Robinson. It's Mr. Robinson's
6 office, Mr. Robinson's fax machine, Mr. Robinson's
7 secretary. And I think Mr. Robinson, although this
8 may not be in the record, would admit to you he was
9 in state court in the law division on or about
10 January 6th.

11 If we go back to the statute, Your
12 Honor, I don't want to lose the forest for the
13 trees, the statute that counsel alleges was
14 violated, 11 U.S.C. 727(a)(4) that I'm sure Your
15 Honor could cite for us word for word, requires the
16 proving of a false oath or account. I submit there
17 has been no proof at this trial this afternoon of
18 any false oath or account.

19 THE COURT: Sir, the oath that the
20 schedules are true and complete is false, isn't it?
21 It does not include a batch of creditors; isn't that
22 right?

23 MR. JESSER: No, I don't concede that,
24 Judge.

25 THE COURT: Why not?

1 MR. JESSER: And I'm not being semantical
2 with Your Honor. It was in, arguably, the wrong
3 place. The next schedule --

4 THE COURT: No, no, no. Each schedule
5 has to be accurate. There's one thing called a
6 statement of affairs which asks you to list
7 litigation. There are reasons why you want to
8 require litigation to be listed. There is another
9 section, a different section, Schedule F, which
10 requires the listing of unsecured claims, unsecured
11 creditor claims. A creditor in Bankruptcyland is
12 very broadly defined, and it certainly includes
13 somebody that's brought a lawsuit. It doesn't have
14 to be a liquidated claim. Creditors in -- that is
15 claimants, plaintiffs in lawsuits, are creditors.
16 So there's absolutely no doubt that it should have
17 been listed in both places, just like the lawyer
18 said tonight.

19 MR. JESSER: And I was going to say
20 assuming arguendo --

21 THE COURT: Now, therefore, since it
22 wasn't listed, why is that not a false pleading or a
23 false affidavit?

24 MR. JESSER: But assuming arguendo that
25 it is false for the sake of this very highly

1 scholarly dialogue that we're having, counsel has
2 alleged it was fraud, it was fraudulently --

3 THE COURT: Yes. But as you --

4 MR. JESSER: -- intended.

5 THE COURT: -- properly recited the
6 statute, fraud may consist of a false affidavit.
7 I'm just asking you why isn't this a false
8 affidavit, that is his affidavit at the end of the
9 filing. The bankruptcy filing is where the debtor's
10 affidavit comes, and he says it's complete and
11 truthful, everything is complete and truthful.

12 MR. JESSER: Well, obviously, Dr. Smith
13 is a layperson to the law. And this may not be very
14 lawyerly for me to say, but as a nonbankruptcy
15 practitioner, I find it rather disingenuous that
16 Dr. Smith can so easily file a voluntary petition,
17 and I know the court is engaging in a very
18 scholarly, appellate-type dialogue, but then be
19 expected to know the hyper-critical nuances of the
20 Code and just where -- relying on his attorney, he's
21 yet nevertheless supposed to know where exactly to
22 schedule his creditors that he forthrightly names
23 within the four corners of the petition.

24 THE COURT: Counsel, there's nothing
25 hyper-technical and there's nothing complex about

1 this dialogue. In Bankruptcyland the schedules have
2 to be filled out accurately so that the creditors
3 can get notice.

4 MR. JESSER: And we're --

5 THE COURT: It's that Schedule F that is
6 the basis for the clerk's notice to creditors
7 telling them about the bankruptcy.

8 MR. JESSER: Okay.

9 THE COURT: Now, sometimes people
10 actually send notice to their creditors. The lawyer
11 will say, "You got to stop this lawsuit because I've
12 just filed bankruptcy." But for some unexplained
13 reason that wasn't done until the very -- a few
14 days, only a few days were left in the deadline.

15 MR. JESSER: Well, Judge, we have these
16 colloquial expressions sometimes put on the White
17 Sox, "They don't win pretty, they win ugly." This
18 wasn't a textbook case. But we seem to overlook the
19 fact that Mr. Robinson knew in 2004 the doctor had
20 sought bankruptcy relief in 2004. I'm not --

21 THE COURT: Yes, he did.

22 MR. JESSER: -- hanging my hat --

23 THE COURT: He did.

24 MR. JESSER: -- on that.

25 THE COURT: But, of course, that cuts --

1 that doesn't cut against the plaintiff because he
2 knew the case was dismissed. All the creditors find
3 out the case gets dismissed once it's dismissed. So
4 it didn't mean anything. It doesn't mean that he
5 should watch the bankruptcy court every day to find
6 out if there was a new case. Surely you're not
7 implying that. And, of course, it cuts the other
8 way, that your client went through bankruptcy and
9 knew to schedule Mr. Robinson, and he -- so that his
10 clients would get notice in the first case but not
11 in the second.

12 MR. JESSER: We used to have, I thought
13 at least when I went to law school, a reasonable man
14 standard. If Dr. Smith, although I did not examine
15 him on that, has knowledge that Johnson & Bell has
16 notified Mr. Robinson of his 2005 bankruptcy, what
17 is this poor man further to do?

18 THE COURT: Say that again, please.

19 MR. JESSER: Under a reasonable man
20 standard, if that still exists in the law as it did
21 when we were in law school, if Dr. Smith knows that
22 Johnson & Bell, a highly distinguished firm, is
23 notifying on December 23 Mr. Robinson that he has
24 gone and received -- he has gone into bankruptcy
25 court the end of September, what more is Dr. Smith

1 expected to do?

2 THE COURT: Well, first of all, he's
3 expected to sign accurate schedules. And as you
4 read the statute, counsel, and if he has filed false
5 schedules, even though his heart is pure, can he be
6 guilty of fraud?

7 MR. JESSER: No.

8 THE COURT: If his heart is pure but his
9 schedules are false, you're saying he cannot be
10 guilty of fraud?

11 MR. JESSER: Well, I don't know about --
12 that's a hard characterization for me to relate to.
13 He committed no overt acts of fraud, and then we
14 have the, if I recall correctly, fraudulent
15 withholding. He withheld nothing from Mr. Sinn. To
16 the contrary, he told Mr. Sinn about Mr. Robinson's
17 lawsuits.

18 THE COURT: Well, the question we're
19 going to have to decide, I guess, is whether -- I
20 mean, you have put on evidence that said, in effect,
21 his heart is pure, his lawyer made a mistake, and
22 his lawyer's heart was pure. You haven't explained
23 why the state court lawyer didn't notify anybody
24 earlier. But you've implied that your client
25 doesn't know what the duties are particularly, and

1 therefore his heart remains pure. So it is a
2 classic type of case as to whether or not somebody
3 that files a false affidavit in bankruptcy, whether
4 he has a defense because his heart was pure.

5 MR. JESSER: Well, the court raised with
6 me a moment ago, and I may have misinterpreted this,
7 that doctor, or any other bankrupt, it could be me
8 seeking bankruptcy court, has to almost recertify
9 every section of the petition. I think if I were to
10 recall doctor to the witness stand, he would testify
11 that he was signing at the end. Whether it's manual
12 or electronic, it doesn't matter. He stands behind
13 what he signed. But he was trying to certify the
14 accuracy and completeness of the whole petition. I
15 submit, Your Honor, and I never use the word
16 "technicality," but we're here discussing a highly
17 procedural point.

18 THE COURT: Well, counsel, keep in mind
19 that you are seeking the advantage of a very highly
20 procedural point, which is the deadline for filing
21 an objection to a discharge, a deadline which --

22 MR. JESSER: He came --

23 THE COURT: -- protects debtors.

24 MR. JESSER: He came in on time. He came
25 in on the 364th day.

1 THE COURT: No. He has to come in with a
2 heavy burden on the 364th day. If he came in by the
3 first deadline, which is for filing of an adversary
4 complaint objecting to discharge, he would only have
5 to show that the type of case pending in state court
6 is a type of case which, if he won, should be one in
7 which dischargeability of that debt should be
8 denied, a much lesser burden. I don't mean to
9 pester you with a lot of questions --

10 MR. JESSER: No, I --

11 THE COURT: -- but these are the
12 questions on which the case turns.

13 MR. JESSER: Well, obviously the court is
14 not pestering me. There are very few courts that
15 would be so intellectually -- that would engage me
16 in such an intellectual discussion. It's for the
17 very reason that no one could ever expect -- and I'm
18 not flattering you, Judge, but no one could ever
19 expect to walk into this courtroom and try to
20 buffalo you or spin you into something that these
21 two witnesses testified as forthrightly as they did.
22 And there was no attempt to make excuses, but
23 rather, "Yeah, we put it in a place that Your Honor
24 doesn't approve of. We're sorry. We made a
25 mistake." It didn't defraud anyone. Mr. Robinson

1 had ample time to rectify it. I get calls at 10:30
2 at night if -- when I'm trying to go to bed. If I
3 have to, I stay up until 2:00 in the morning to fix
4 a problem so I can sleep easily. He had time.

5 THE COURT: Thank you, counsel.

6 Counsel, any rebuttal?

7 MR. ROBINSON: Just a small rebuttal.
8 Judge, in terms -- like I said before, the court
9 must look at the totality of the circumstances. The
10 court must --

11 THE COURT: Slower, counsel, and use the
12 mic.

13 MR. ROBINSON: Yes, Judge. I'm sorry.
14 The court must look at the totality of the
15 circumstances, Judge, and determine whether or not
16 there was any alleged inadequacies, and I quote
17 that, that did not prejudice the creditor. So there
18 is no way the defendant can sit here today, Judge,
19 and say that there were not any inadequacies that
20 prejudiced Trina Tidwell and Sandra Sterling-Ahalla
21 in terms of that. He filed his bankruptcy in
22 September, didn't file a motion to transfer the
23 bankruptcy until December the 23rd, almost three
24 months later at -- during the period of time where
25 not only attorneys, but a lot of individuals, Judge,

1 would likely be on vacation, noticing up a case for
2 a hearing -- actually, the hearing was on January
3 the 7th, Judge.

4 THE COURT: Let's assume that he had --
5 that they had given you notice a few days after they
6 filed the bankruptcy, actual notice by a letter from
7 the lawyer saying, "I just filed a bankruptcy," but
8 they had omitted scheduling your clients or you on
9 Schedule F so the clerk never sent you notice --

10 MR. ROBINSON: Right, Judge.

11 THE COURT: -- but you got notice a
12 couple of days after the bankruptcy was filed. The
13 oath would still have been false, right?

14 MR. ROBINSON: Yes, the oath would still
15 have been false, Judge. Yes.

16 THE COURT: So could you rely on that
17 falsity if you had had three months' notice, actual
18 notice?

19 MR. ROBINSON: Not in the terms of
20 notice, Judge. No, I don't think I would be able to
21 rely on that falsity.

22 THE COURT: Why not?

23 MR. ROBINSON: Because I think at that
24 particular time --

25 THE COURT: Isn't it your argument that

1 the oath was false and, therefore, there was fraud?

2 MR. ROBINSON: Oh, in terms of fraud,
3 yes. I thought you said in terms of notice.

4 THE COURT: So could you still make that
5 argument if you had actually gotten notice a couple
6 days after the bankruptcy was filed?

7 MR. ROBINSON: Yes. The fraud argument
8 is --

9 THE COURT: Not from the clerk, not based
10 on the false Schedule F, but just based on a
11 lawyerly letter from the debtor's lawyer?

12 MR. ROBINSON: On a basis of fraud, I
13 would say, yes, Judge, that argument could be made.

14 THE COURT: You could still argue fraud
15 if you got notice and disregarded the deadline?

16 MR. ROBINSON: Yes, Judge, I think it
17 would be argument on fraud. The only exception
18 would be if, in fact, it was -- there was -- had
19 bankruptcy experience or had dealt with the
20 situation before as far as that is concerned.

21 THE COURT: So we'd have to make an ad
22 hominem, that is an analysis of the lawyer as to
23 whether the lawyer had experience?

24 MR. ROBINSON: Well, Judge, I mean, it's
25 kind of ambiguous, but it does say the totality of

B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

Sandra Ahlla-Sterling)

Plaintiff)

v.)

Dr. Bruce Smith,
Kennedy Medical Service
Corporation)

Defendants)

No

Plaintiff Demands Trial by Jury
Amount claimed: In excess of 30,000

Judge

031 043759

CALENDAR H

TORT-INTENTIONAL

COMPLAINT

COMPLAINT FOR DAMAGES AGAINST THE DEFENDANTS FOR INJURIES
SUFFERED BY PLAINTIFF AS A RESULT OF THE INTENTIONAL ACTS OF
COMMITTING SEXUAL ASSAULT

JURY DEMAND

NOW COMES, the plaintiff, SANDRA AHLA-STERLING by and through her attorneys, DARRYL E. ROBINSON, P.C. and JOHN F. LYKE & ASSOCIATES, and complaining of the defendants, DR. BRUCE SMITH (Hereafter known as Dr. SMITH), and KENNEDY MEDICAL SERVICE CORPORATION stating as follows:

FACTS:

1. On or about September 30, 2002 at approximately 2:00 p.m. Kennedy Medical Service Corporation was duly incorporated in the State of Illinois, County of Cook, City of Chicago where it is organized and operates its principle place of business.
2. That on September 30, 2002 at approximately 2:00 pm, Dr. Bruce Smith was an employee of and/or authorized to perform work on behalf Kennedy Medical Service Corporation.
3. That Sandra Ahlla-Sterling was a regular patient of Kennedy Medical Service Corporation approximately one and one-half years prior to September 30, 2002.
4. That on September 30, 2002 at approximately 2:00 pm, Sandra Ahlla-Sterling was attending her regularly scheduled prenatal exam with Dr. Smith.

5. That after Sandra Ahlla-Sterling had arrived at Kennedy Medical Service Corporation for her exam for lower abdominal pain.
6. That Dr. Smith informed Sandra Ahlla-Sterling to undress, lay on the table in the patient's room and place her legs in the sitirrupts so that he could exam her stomach and vagina area.
7. That on September 30, 2002 at approximately 2:00 pm Dr. Smith was performing a prenatal examination of Sandra Ahlla-Sterling without the assistance of a nurse.
8. That Dr. Smith began to exam Sandra Ahlla-Sterling's vagina area with his hand
9. That without notice or consent, Dr. Smith unlawfully began to sexually assault Sandra Ahlla-Sterling by inserting his penis into her vaginal area, holding her right and left legs with is hands and rocking back and forth.
10. That, Sandra Ahlla-Sterling, after noticing the unlawful acts of Dr. Smith, arose from the table to stop his assault.
11. That on September 30, 2002, Sandra Ahlla-Sterling left Kennedy Medical Service Corporation and filed a Police Report concerning the unlawful acts of Dr. Smith.
12. That Sandra Ahlla-Sterling subsequently files this suit.

Count I

(Sexual Assault and Battery-Dr. Smith and Kennedy Medical Service Corporation)

13. Realleging counts 1-12 and incorporating them therein.
14. Dr. Smith, acting within the scope of his agency, took indecent liberties with Sandra Ahlla-Sterling by forcibly laying hands on her, inserting his penis inside her vagina, without her consent, wile she was in the care and custody, and under the control of defendants.
15. That Sandra Ahlla-Sterling was intentionally and unlawfully assaulted and battered by defendants

16. That as a proximate and direct result of defendants' actions, Sandra Ahlla-Sterling suffered injury and damages including severe mental and emotional distress.
17. Defendants' actions were malicious, wanton and performed with reckless disregard for Sandra Ahhlla-Sterling's rights and feelings.

WHEREFORE, Sandra Ahlla-Sterling is entitled to compensatory damages in excess of \$30,000, punitive damages in an amount to be determined, attorney fees, cost and such other relief as the Court deems proper under the circumstances.

Count II
(Negligent Hiring and Retention-Kennedy Medical Service Corporation)

18. Realleging counts 1-12 and incorporating them therein
19. That on or about May of 2000 Tamika Williams was a patient at the Kennedy Medical Service Corporation.
20. That on or about May of 2000, Tamika Williams was attending her regularly scheduled appointment with Dr. Smith on a referral from Trinity Hospital after complaining of experiencing pain during sexual intercourse.
21. That after Tamika Williams arrived at Kennedy Medical Service Corporation, she was told by Dr. Smith to undress, lay on the patient table and place her legs in the stirrups.
22. That Dr. Smith placed rubber gloves over both of his hands.
23. That Dr. Smith placed an unknown jelly into one of his hands and placed that hand into the vagina of Tamika Williams.
24. That Dr. Smith moved his entire body closer to Tamika Williams by placing himself directly between her legs.
25. That Dr. Smith, without notice, or consent, unlawfully sexually assaulted Tamika Williams by inserting his penis inside her vagina.

26. That Tamika Williams, after feeling Dr. Smith penis inserted inside her, sat up so she could see what he was doing but was pushed back onto the patient's table by Dr. Smith.
27. That after Dr. Smith unlawfully sexually assaulted Tamika Williams, he took off his gloves and left the patients room.
28. That Tamika Williams, after getting dressed, ran out of the patient room and ran into the nearest washroom.
29. That a nurse, employed by Kennedy Medical Service Corporation, after noticing Tamika William's actions, followed her into the washroom.
30. That after speaking with Tamika Williams, the nurse called the Chicago Police who arrested Dr. Smith.
31. That on August 2, 2002, Trina Tidwell was a regular patient of Kennedy Medical Service Corporation approximately four years prior to August 2, 2002.
32. That on August 2, 2002, Trina Tidwell was approximately 32 weeks pregnant.
33. That on August 2, 2002 at approximately 4:00 pm, Trina Tidwell was attending her regularly schedule prenatal exam with Dr. Smith.
34. That after Trina Tidwell had arrived at Kennedy Medical Service Corporation for her exam she informed Dr. Smith that she was feeling a lot of pressure in her stomach area as a result of the unborn baby.
35. That Dr. Smith informed Trina Tidwell to undress and lay on the table in the patient's room so that he could exam her stomach and vagina area.
36. That on August 2, 2002 at approximately 4:00 pm Dr. Smith was performing a prenatal examination of Tina Tidwell without the assistance of a nurse.
37. That Dr. Smith began to exam Trina Tidwell's vagina area with his hand
38. That without notice or consent, Dr. Smith unlawfully began to sexually assault Trina Tidwell by inserting his penis into her vaginal area, holding her right and left legs with is hands and rocking back and forth.

39. That, Trina Tidwell, after noticing the unlawful acts of Dr. Smith, arose from the table to stop his assault.
40. That on august 2, 2002, Trina Tidwell left Kennedy Medical Service Corporation and filed a report with the Chicago Police Department
41. That Kennedy Medical Service Corporation was aware of the previous unlawful sexual assaults of Tamika Williams and Trina Tidwell by Dr. Smith prior to the unlawful sexual assault of Sandra Ahlla-Sterling but failed to warn, discipline, terminate or take action against Dr. Smith.
42. That Kennedy Medical Service Corporation authorized and approved of the unlawful acts of Dr. Smith by allowing him to continue to work for them even after they were on notice of his propensity to commit unlawful acts of sexual assault.
43. That the particular duties and responsibilities of Dr. Smith placed him in a unique position of power and control over otherwise defenseless persons such as Sandra Ahlla-Sterling.
44. That as a result of the particular duties and responsibilities of Dr. Smith, defendant Kennedy Medical Service Corporation had a duty to exercise ordinary care in investigating any and all allegation or charges of unlawful conduct made against Dr. Smith.
45. That, upon information and belief, defendant Kennedy Medical Service Corporation failed to act with ordinary care in investigating the prior unlawful acts of Dr. Smith
46. That upon information and belief, Kennedy Medical Service Corporation knew or should have known that Dr. Smith posed a risk of abusing and sexually assaulting female patients but failed to act with ordinary care in continuing to employ him.
47. As a proximate and direct result of defendant Kennedy Medical Service Corporation's failure to act with ordinary care, Sandra Ahlla-Sterling suffered injuries and damages, including severe mental and emotional distress.

WHEREFORE, Sandra Ahlla-Sterling is entitled to compensatory damages in excess of \$50,000, punitive damages I an amount to be determined, attorney fees, cost and such other relief the Court deems proper under the circumstances.


Attorney For Plaintiff

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FILED

00190-03001

File ID: 00347

IN THE CIRCUIT COURT OF COOK COUNTY
COUNT DEPARTMENT, LAW DIVISION

TERNA TIDWELL

PLAINTIFF,

v.

SMITH BRUCE, M.D. and KENNEDY
MEDICAL SERVICE CORPORATION

DEFENDANTS.

Court No. 03L-15760

MOOTION TO TRANSFER TO THE BANKRUPTCY CALENDAR

NOW COMES the Defendant, BRUCE SMITH, M.D., by and through his attorneys, JERSON & BELL, LTD., and hereby moves this Honorable Court to transfer this Motion to the Bankruptcy Calendar. In support thereof, the Defendant states as follows:

1. On September 26, 2005, the Defendant filed a Voluntary Petition for Relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, which is pending as Case No. 05-40195. (A copy of the Voluntary Petition is attached hereto as Exhibit "A").
2. On September 27, 2005, a Notice of Chapter 7 Bankruptcy was issued which provides that "the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property." (Notice of Chapter 7 Bankruptcy case is attached hereto as Exhibit "B").
3. Therefore, as a result of the above filings, any further action against the Defendant is stayed under 11 U.S.C. 362(a) of the Bankruptcy Code.

Exhibit D

4. Pursuant to Section 362(a) of the United States Bankruptcy Code, the Plaintiff is stayed from taking any further action against the Defendant in this pending action without relief from the United States Bankruptcy Court for the Northern District of Illinois.

5. The Plaintiff's litigation against the Defendant should be transferred to this Court's Bankruptcy Calendar in light of the Defendant's filing of a Petition for Relief under Chapter 7 of the United States Bankruptcy Code and the entry of the stay.

WHEREFORE, the Defendant, BRUCE R. SMITH, M.D., hereby prays that the Honorable Court enter an order transferring this matter to the Court's Bankruptcy Calendar.

Respectfully submitted,

JOHNSON & BELL, LTD.


One of the Attorneys for the Defendant

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